***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

ORIGINAL

# 77-7205

[42,366]

# United States Court of Appeals

FOR THE SECOND CIRCUIT

IMAGE CARRIER CORPORATION,

*Plaintiff-Respondent,*

*against*

ABRAHAM D. BEAME, Mayor of New York City, et al.,

*Defendants-Appellants.*

THE HOUSE OF LITHOGRAPHY, INC., et al.,

*Plaintiffs-Respondents,*

*against*

ABRAHAM D. BEAME, Mayor of New York City, et al.,

*Defendants-Appellants.*

## APPENDIX


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UNITED STATES COURT OF APPEALS
FILED
JUN 17 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT



249 Press of Fremont Payne, Inc., 417 Canal St., N. Y.—966—6570

PAGINATION AS IN ORIGINAL COPY

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## Relevant Docket Entries.

| DATE | PROCEEDINGS |
|---|---|
| Jul. 24-74 | Filed complaint & issued summons. |
| Jul. 31-74 | Filed Memo-End. on motion of P.M. Frank. Motion granted, So Ordered, MacMahon, J. |
| Aug. 13-74 | Filed summons & Marshal's return. Served:<br>Chairman, NYC Bd. of Ed.<br>By: D. Weiss 8-5-74<br>Pres. NYC Health & Hosp.<br>By: G. Kalkiner 8-1-74<br>Chrm. NYC Bd. Higher Ed.<br>By: G. D. Cohen 7-25-74<br>Corp. Counsel, NYC<br>By: A. Schanbach 8-1-74 |
| Sept. 25-74 | Filed Order & Stip. that the time for defts to answer the complaint is extended to 10-14-74 . . . MacMahon, J. |
| Sept. 27-74 | Filed Stip & Order extending to 10-28-74, time for pltffs to move court for an order that entitled proceeding be maintained as a class action . . . MacMahon, J. |
| Oct. 4-74 | Filed defts memo of law in support of motion to dismiss. |
| Oct. 22-74 | Filed Stip & Order extending to 11-22-74 return date for defts motion . . .MacMahon, J. |
| Nov. 15-74 | Filed pltffs amended complt—class action. Summons issued. |
| Dec. 10-74 | Filed summons & Marshal's returns. Served:<br>Abraham D. Beame, Mayor<br>By: P. Alena 11-19-74<br>Robt. Cohen, Comm.<br>By: P. Alena 11-19-74<br>Harrison Goldin<br>By: A. Schinbuck 11-19-74<br>John Holloman, Pres.<br>By: C. McElroy 11-20-74<br>Paul Gibson, Bd. Member<br>By: C. McElroy 11-20-74 |

*Relevant Docket Entries.*

| DATE | PROCEEDINGS |
|---|---|
| | James Dumpson, Bd. Member<br>By: C. McElroy 11-20-74<br>June J. Christmas, M.D.<br>By: C. McElroy 11-20-74<br>Frank Folk, M.D.<br>By: C. McElroy 11-20-74<br>Charles J. Bensley<br>By: C. McElroy 11-20-74<br>Vernal G. Cave, M.D.<br>By: C. McElroy 11-20-74<br>Edward O. Rothschild, M.D.<br>By: C. McElroy 11-20-74<br>Donald H. Elliott<br>By: C. McElroy 11-20-74<br>Milton F. Kirchman<br>By: C. McElroy 11-20-74<br>William Michaelson<br>By: C. McElroy 11-20-74<br>Daniel J. Paulo, M.D.<br>By: C. McElroy 11-20-74<br>Lowell E. Bellin, M.D.<br>By: C. McElroy 11-20-74<br>Robert Simons<br>By: C. McElroy 11-20-74<br>Elena Padilla<br>By: C. McElroy 11-20-74<br>Robert J. Bradbury<br>By: Mr. P. Lawrence 11-20-74<br>Leonard Katz<br>By: M. Seasy 11-25-74<br>Alfred A. Giardino<br>By: L. Cannacho 11-20-74<br>Dr. Cherston Goldin<br>By: L. Cannacho 11-20-74<br>Vincent R. Fitzpatrick<br>By: L. Cannacho 11-20-74<br>Francesco Cantarello<br>By: L. Cannacho 11-20-74<br>Franklin H. Williams<br>By: L. Cannacho 11-20-74<br>Mrs. Gustave Hauser<br>By: L. Cannacho 11-20-74 |

*Relevant Docket Entries.*

| DATE | PROCEEDINGS |
|---|---|
| | Harold Jacobs<br>By: L. Cannacho 11-20-74<br>James Murphy<br>By: L. Cannacho 11-20-74<br>Mrs. Vinia R. Johnson-Quinones<br>By: L. Cannacho 11-20-74<br>Mrs. Marta Valle<br>By: L. Cannacho 11-20-74<br>James F. Regan<br>By: L. Cannacho 11-20-74<br>Abraham Rabinowitz<br>By: L. Cannacho 11-20-74<br>Francis McGivney<br>By: L. Cannacho 11-20-74<br>James F. Regan<br>By: M. Kolanovic 12-3-74<br>Steven Aiello<br>By: M. Kolanovic 12-3-74<br>Robert Christian<br>By: M. Kolanovic 12-3-74<br>Dr. Amelia Ashe<br>By: M. Kolanovic 12-3-74<br>Joseph G. Barkan<br>By: M. Kolanovic 12-3-74<br>Isiah E. Robinson<br>By: M. Kolanovic 12-3-74<br>Joseph Monserrat<br>By: M. Kolanovic 12-3-74<br>Sol Berger<br>By: Miss Hurley 12-4-74 |
| Dec. 18-74 | Filed Stip & Order extending to 1-24-75 time for deft's to move or answer re amended complt. Should def't move to dismiss the amended complt, said motion shall be made returnable also on 1-24-75. Time for pltff to move for an order to maintain action as a class action is extended to 1-3-75 . . . MacMahon, J. |
| Dec. 30-74 | Filed pltffs affdvt & notice of motion determining that this action be maintained as a class action. Ret. 1-2-74. |

*Relevant Docket Entries.*

| DATE | PROCEEDINGS |
|---|---|
| Dec. 30-74 | Filed pltffs memo of law in support of class action motion. |
| Jan. 15-75 | Filed Order that Allied Printing Trades Council of Greater N.Y. have leave to intervene & is made a party thereto, & may file an answer within ten (10) days from date of this order . . . MacMahon, J. m/n |
| Jan. 17-75 | Filed def't (Allied) affdvt & notice of motion to dismiss the complt. Ret. 1-24-75. |
| Jan. 17-75 | Filed application to intervene filed on behalf of Allied Printing. |
| Jan. 17-75 | Filed deft-intervenor (Allied) brief in support of motion to dismiss the complt. |
| Jan. 17-75 | Filed deft-intervenor's Answer to the complt. |
| Jan. 20-75 | Filed pltffs reply (memo of law) to deft's opposition to pltffs class action motion. |
| Jan. 20-75 | Filed deft's affdvt & notice of motion to dismiss the amended compl. Ret. 2-7-75. |
| Jan. 20-75 | Filed deft's memo of law in support of motion to dismiss amended complt. |
| Jan. 24-75 | Filed affdvt of Howard Schubert in reply to certain statements of defts memo in opposion to pltffs motion. |
| Feb. 7-75 | Filed defts affdvt in response to the reply affdvt of Howard Schubert. |
| Feb. 11-75 | Filed Stip & Order extending to 2-14-75 for deft (Allied Printing) pltffs motions to be heard . . . MacMahon, J. |
| Mar. 3-75 | Filed deft (Allied) affdvt in reply to pltffs affdvt & memo in opposition to defts motion to dismiss the complt (Rule 12(b)). |
| Mar. 5-75 | Filed defts affdvt in support of motion to dismiss the amended complt., & in reply to the opposition submitted by pltff. |
| Mar. 5-75 | Filed defts reply memo in support of motion to dismiss the amended complt. |

| DATE | PROCEEDINGS |
|---|---|
| 8-25-75 | Filed Memo-End. on motion of 12-30-74. See memorandum decision & order of this date . . . MacMahon, J. m/n |
| 8-25-75 | Filed Memo-End. on motion of 1-17-75. See Memorandum decision & order of this date . . . MacMahon, J. m/n |
| 8-25-75 | Filed Memo-End. & order on motion of 1-20-75. See memorandum— |
| 8-25-75 | Filed Memorandum & Order that for reasons indicated, we deny: (1) pltffs motion to maintain this action as a class action; (2) defts & deft intervenor's cross-motions to dismiss the amended complt for failure to state a claim; & (3) deft-intervenor's cross-motion to dismiss on grounds indicated, (a through d). We grant: (1) defts cross-motion to dismiss as to pltffs Design Distr. & Schubert for lack of standing & as to all pltffs for lack of subject matter; (2) defts & deft-intervenor's cross-motions to dismiss, as to pltff Master Printers for lack of standing under 28 U.S.C. § 1343(3). We dismiss as to deft City & its agencies *sua sponte* for lack of subject matter jurisdiction . . . So Ordered, MacMahon, J. m/n |
| 3-15-76 | Filed pltffs motion for consolidation with (75 Civ 6443) TPG on the ground that both cases present identical questions of law & fact. Ret. 3-26-76. |
| 3-25-76 | Filed Stip & Order adjourning to 4-2-76, argument of the motion for consolidation . . . MacMahon, J. |
| 3-31-76 | Filed deft-intervenor (Allied Printing) affdvt in opposition to pltffs motion to consolidate with (75 Civ 6443). |
| 4- 1-76 | Filed Stip & Order that motion for consolidation ret. 4-1-76 be submitted without oral argument . . . MacMahon, J. |

*Relevant Docket Entries.*

| DATE | PROCEEDINGS |
|---|---|
| 6- 8-76 | Filed Order that Francis T. Coleman & James B. Anderson, members of the firm of Counihan, Casey & Loomis, 1000 Connecticut Ave, N.W., Wash. D.C. be admitted to the Bar of this Court for purposes of appearing before this Court in all matters in connection with the above entitled case . . . for pltffs. MacMahon, J. n/m |
| 6- 8-76 | Filed pltffs interrogs to defts—Set #1—to Isiah E. Robinson, Jr. Pres. NYC Bd. of Ed. |
| 6- 8-76 | Filed pltffs interrogs to defts—Set #1—To Alfred A. Giardino, Chairman, NYC Bd. of Higher Ed. |
| 6- 8-76 | Filed pltffs interrogs to defts—Set #1—To: Sol Berger, Dir. of Purchasing, NYC Bd. of Ed. |
| 6- 8-76 | Filed pltffs interrogs to defts—Set #1—To: Francis McGivney, Dir. of Purchase, NYC Bd. of Higher Ed. |
| 6- 8-76 | Filed pltffs interrogs to defts—Set #1—To: Robert Cohen, Comm. of Purchase, NYC. |
| 6- 8-76 | Filed pltffs interrogs to defts—Set #1—To: Harrison Goldin, Comptroller, NYC. |
| 6- 8-76 | Filed pltffs interrogs to defts—Set #1—To: Robert J. Bradbury, Comptroller, NYC Health & Hospital Corp. |
| 6- 8-76 | Filed pltffs interrogs to defts—Set #1—To: Abraham Ribinowitz, Comptroller, NYC Bd. of Higher Ed. |
| 6- 8-76 | Filed pltffs interrogs to defts—Set #1—To: John Holloman, Pres. NYC Health & Hospital Corp. |
| 6- 8-76 | Filed pltffs interrogs to defts—Set #1—To: Abraham D. Beame, Mayor, NYC. |

*Relevant Docket Entries.*

| DATE | PROCEEDINGS |
|---|---|
| 6- 8-76 | Filed pltffs interrogs to defts—Set #1—To: Leonard Katz, Dir. NYC Health & Hospital Corp. |
| 8- 5-76 | Filed Pre-Trial Order #1 . . . MacMahon, J. |
| 8-11-76 | Filed Answer of Intervenor (Allied Printing Trades Council of N.Y.) in (75 Civ 6443). |
| 9- 7-76 | Filed pltffs interrogs to intervenor (Allied Printing Trades Council of Greater N.Y.). |
| 9- 9-76 | Filed Answer to complt by defts. |
| 9- 9-76 | Filed Pre-Trial Order #2 . . . MacMahon, J. |
| 09-27-76 | Filed Pltffs. Request for Production of Documents. |
| 09-27-76 | Filed Pltffs. Interrogatories to Deft. Set 2. |
| 11-17-76 | Filed Pltffs' Notice of Appearance As Counsel. |
| 11-17-76 | Filed Pltffs' Proposed Conclusions of Law. |
| 11-17-76 | Filed Pltffs' Statement Of Facts Not Disputed. |
| 11-17-76 | Filed Pltffs' Proposed Findings Of Fact. |
| 11-17-76 | Filed Trial Brief of Pltffs. |
| 11-24-76 | Filed Intervenor-Defts affdvt & notice of motion compelling pltffs to produce for inspection & copying certain documents. Ret. 11-30-76. (Intervenor—Allied Printing Trades). |
| 11-24-76 | Filed Trial Brief of (Intervening-Deft) Allied. |
| 12- 2-76 | Filed pltffs answer to Intervenor's Allied Printing, interrogs. |
| 12-13-76 | Filed Intervenor-Deft (Allied Printing) Post-Trial Brief. |
| 12-15-76 | Filed defts memo of law re printing for the City of N. Y. |

*Relevant Docket Entries.*

| DATE | PROCEEDINGS |
|---|---|
| 12-16-76 | Filed pltffs post trial brief. |
| 2- 8-77 | Filed transcript of record of proceedings dated 12-6-76. |
| 2-18-77 | Filed Notification of Name & address change of pltff's attys. |
| 4- 8-77 | Fld Opinion #45767 . . . Accordingly, we find that defts' policy and practice of restricting bidding upon, and awarding printing contract to, only those printing establishments whose employees are represented by labor organizations and who can, therefore, exhibit the union label, viol. the equal protection clause of the U.S. Constitution . . . The foregoing constitutes our findings of fact and conclusions of law in accordance with Rule 52(a) FRCP. Settle an order within 10 days not inconsistent with this opinion . . . MacMahon, J. mn (fld in 74-3155). |
| 04-20-77 | Filed Order & Judgment enjoining Defts. from implementing policy of restraining bidding upon and awarding printing contracts to only those printing establishments whose employees exhibit the union label—order herein is stayed pending appeal to USCA, as indicated. MacMahon, J.—Judgment Entered—Clerk—(m/n), ent. 4/21/77. |
| 04-22-77 | Filed Defts'. Notice of Appeal to the USCA from the order entered on 4-20-77. (Mailed Copies to Townley & Updike, & Menagh, Trainnor on 4-25-77). |
| 12-23-75 (1) | Filed Complaint and issued summons. |
| 01-19-76 (2) | Filed summons and return—served the following:<br>Abraham D. Beame, Mayor of N.Y.City by L. Gerson on 12-31-75<br>Charles J. Bensley, Member Bd. of Directors, NYC Health & Hosp. Corp. by Catherine McElroy on 12-31-75 |

| DATE | PROCEEDINGS |
|---|---|
| | Leonard Katz by Catherine McElroy on 12-31-75 |
| | Robert J. Bradbury by Catherine McElroy on 12-31-75 |
| | William Michaelson by C. McElroy on 12-31-75 |
| | Elena Padilla by C. McElroy on 12-31-75 |
| | Frank Folk, M.D. by C. McElroy on 12-31-75 |
| | John Holloman by Catherine McElroy on 12-31-75 |
| | June J. Christmas, M.D. by Catherine McElroy on 12-31-75 |
| | Donald H. Elliot by Mrs. McElroy on 12-31-75 |
| | Milton F. Kirschman by C. McElroy on 12-31-75 |
| | James Dumpson by Catherine McElroy on 12-31-75 |
| | Vernal G. Cave, M.D. by Catherine McElroy on 12-31-75 |
| | Daniel J. Paulo, M.D. by Catherine McElroy on 12-31-75 |
| | Lowell E. Bellin, M.D. by Catherine McElroy on 12-31-75 |
| | Paul Gibson by Catherine McElroy on 12-31-75 |
| | Steven Aiello by H. Siegel on 1-6-76 |
| | Robert Christian by H. Siegel on 1-6-76 |
| | Joseph Monserrat by H. Siegel on 1-6-76 |
| | Joseph G. Barkan by H. Siegel on 1-6-76 |
| | Dr. Amelia Ashe by H. Siegel on 1-6-76 |
| | Sol Berger, personally on 1-6-76 |
| | Robert Cohen by Anthony Ingianni on 1-9-76 |
| | Harrison Goldin by Vincent Ryan on 1-9-76 |
| | Francis McGivney by May P. Bass on 1-15-76 |
| | Isiah E. Robinson by May P. Bass on 1-15-76 |
| | Vinia R. Johnson-Quinones by May P. Bass on 1-15-76 |

*Relevant Docket Entries.*

| DATE | PROCEEDINGS |
|---|---|
| | Harold Jacobs by May P. Bass on 1-15-76<br>Mrs. Gustave Hauser by May P. Bass on 1-15-76<br>Alfred A. Giardino by May P. Bass on 1-15-76<br>Dr. Guerston Goldin by May P. Bass on 1-15-76<br>Vincent E. Fitzpatrick by May P. Bass on 1-15-76<br>Franklin H. Williams by May P. Bass on 1-15-76<br>Isiah E. Robinson, Jr. by May P. Bass on 1-15-76<br>Abraham Rabinowitz by May P. Bass on 1-15-76 |
| 02-20-76 (3) | Filed pltff. Collehan-Saunders Corp. notice of dismissal by said pltff. only. GRIESA, J. |
| 04-08-77 | Filed opinion No. 45767 . . . accordingly, we find that Defts' policy and practice of restricting bidding upon, and awarding printing contracts to, only those printing establishments whose employees are represented by Labor Organizations and who can exhibit the Union Label violate the equal protection clause of the U.S. Constitution. The foregoing constitutes our findings of fact and conclusion of law in accordance with Rule 52 (a) FRCP. Settle an order within 10 days not inconsistent with this opinion. MacMahon, J. |
| 04/20/77 | Filed true copy of order and judgment enjoining Defts. from implementing policy of restraining bidding upon and awarding printing contracts to only those printing establishments whose employees exhibit the Union Label. Order herein is stayed pending appeal to USCA as indicated. MacMahon, J. Judgment entered. |
| 04-22-77 | Filed Defts'. Notice of Appeal to the USCA from the order entered on April 20, 1977. |

## Summons.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 74 Civ. 3155 LFM

---

MASTER PRINTERS OF AMERICA, a division of Printing Industries of America, Inc., a District of Columbia non-profit corporation on behalf of itself and certain of its members, et al.,

Plaintiffs,

v.

NEW YORK CITY, Abraham D. Beame, Mayor; Robert Cohen, Commissioner, Department of Purchase; Harrison Goldin, Comptroller;

NEW YORK CITY, BOARD OF HIGHER EDUCATION, Alfred H. Cardino, Chairman, Dr. Guerston Goldin, Vincent R. Fitzpatrick, Francesco Cantarella, Franklin H. Williams, Mrs. Gustave Hauser, Harold Jacobs, James Murphy, Mrs. Vinia R. Johnson-Quinones, Mrs. Marta Valle, James F. Regan,

Francis McGivney, Director of Purchasing,
Abraham Rabinowitz, Comptroller;

NEW YORK CITY BOARD OF EDUCATION, James F. Regan, President; Steven Aiello, Robert Christian, Dr. Amelia Ashe, Joseph G. Barkan, Isiah E. Robinson Jr., Joseph Monserrat,

Sol Berger, Director of Purchasing;

NEW YORK CITY HEALTH & HOSPITAL CORPORATION, John Holloman, President; Paul Gibson, James Dumpson, June J. Christmas, Frank Folk, Charles J. Bensley, Vernal G. Cave, Edmund O. Rothschild, Donald H. Elliot, Milton F. Kirchman, William Michaelson, Daniel J. Paulo, Lowell E. Bellin, Robert Simons, Elena Padilla,

Robert J. Bradbury, Comptroller, Leonard Katz,
Director of Procurement,

Defendants.

---

*Summons.*

To the above named Defendants:

You are hereby summoned and required to serve upon Hugh P. Husband Jr., whose address is Main Street, Bridgehampton, New York 11932 and Francis T. Coleman and Peter Michael Frank of Counihan, Casey & Loomis, whose address is 1000 Connecticut Avenue, N.W., Washington, D.C. 20036, Plaintiffs' attorneys, an answer to the Complaint which is herewith served upon you, within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, Judgment of Default will be taken against you for the relief demanded in the Complaint.

s/ RAYMOND F. BURGHARDT
Clerk of Court

s/ By: E. A. BECKER
Deputy

(Seal of the U.S. District Court)
Dated November 15, 1974
(This Summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.)

## Amended Complaint—Class Action.

### Amended Complaint

Come now the plaintiffs, Master Printers of America, a divsion of Printing Industries of America, Inc., a District of Columbia non-profit corporation, Design Distributors, Inc., Image Carrier Corporation, and Howard Schubert Company, Inc., and for its cause of action against the defendants state:

### Jurisdiction and Nature of Case

1. This is an action for declaratory judgment under the provisions of 28 U.S.C. § 2201, seeking to declare unconstitutional the policy and practice followed by each and all of the defendants in restricting the bidding upon and awarding of printing contracts to only those establishments whose employees are represented by labor organizations and who can exhibit the union label as evidenced by documents attached hereto and marked "Exhibit 1". Plaintiff further seeks a permanent injunction enjoining defendants from prohibiting the bidding upon or the awarding of city, state and federally-financed printing contracts only to those printing establishments whose employees are represented by labor organizations and who can exhibit the union label. Jurisdiction of this court is invoked pursuant to the provisions of Title 28 U.S.C. § 1343(3), this being a suit in equity authorized by law to be brought to redress the deprivation under power of state statute, ordinance, regulation, custom, or usage of rights, privileges and immunities secured by the Constitution and laws of the United States or by any Act of Congress providing for the equal rights of citizens. The rights here sought to be protected are rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the

Constitution of the United States and by Title 29 U.S.C. § 157. Jurisdiction is also invoked pursuant to the provisions of 28 U.S.C. § 1331(a), with the amount in controversy exceeding $10,000 exclusive of interest and costs and involving an action arising under the Constitution, laws or treaties of the United States.

PARTIES

2. Plaintiff, Master Printers of America, is a division of Printing Industries of America, Inc., a nonprofit District of Columbia corporation with offices in the City of Arlington, State of Virginia. Master Printers of America is a trade association of commercial printers representing over 30,000 printing companies in the United States whose employees have not chosen to be represented by any labor organization, over 300 of which are located in the metropolitan area of New York City.

3. Plaintiff, Design Distributors, Inc., is incorporated in the state of New York, and has its principal place of business at 45 East Industry Court, Deer Park, Long Island, New York. Prior to April, 1973, plaintiff Design Distributors, Inc. maintained its principal place of business in the City of New York and paid taxes to the City of New York.

4. Plaintiff, Image Carrier Corporation, is incorporated in the State of Delaware and licensed to operate in the State and City of New York, with its principal place of business at 30 Rockefeller Plaza, New York, N.Y. Plaintiff Image Carrier Corporation pays New York City taxes.

5. Plaintiff, Howard Schubert Company, Inc., is incorporated in the State of New York and has its principal

place of business at 51 Rushmore Street, Westbury, New York. Prior to January, 1973 plaintiff, Howard Schubert Company, Inc., maintained its principal place of business in the City of New York and paid taxes to the City of New York.

6. The defendant, The City of New York, is a body politic and a political subdivision of the State of New York entitled to sue and be sued in such capacity. Said defendant, through its Department of Purchase, is vested with the power and authority to let and award contracts for the furnishing of all printing and stationery as may be needed by the agencies of the City of New York, (Administrative Code for City of New York, Volume IV, Chapter 33, § 782a-3.0). In carrying out such duties, defendant, City of New York, expends city, state and federal funds.

7. Defendant, Abraham D. Beame, as Mayor of New York City and chief executive officer has the power and authority to exercise general supervisory control of the functions and activities of all administrative departments, including the Department of Purchase for the City of New York.

8. Defendant, Robert Cohen, as Commissioner of Purchase, City of New York, is charged with the responsibility and duty to carry out the functions described above in Paragraph 6.

9. Defendant, Harrison Goldin, as Comptroller, City of New York, is responsible for ordering payments from city funds.

10. The defendant, Board of Higher Education, is created by the Legislature to administer the collegiate

portion of the New York City school system (McKinney's Education Laws, § 6201, *et seq.*). In exercising its duties, it expends city, state and federal funds for the maintenance, operation and development of the city colleges under its jurisdiction, including the expenditure of said funds for the making and purchase of printing.

11. Defendant, Alfred A. Giardino, as Chairman of the Board of Higher Education for the City of New York, and all of the individually named Board members, have the power and authority to exercise general supervisory control of the functions and activities of all administrative departments of the City Board of Higher Education, including the Department of Purchase.

12. Defendant, Francis McGivney, as Director of Purchase for the New York City Board of Higher Education, is charged with the responsibility and duty of letting and awarding contracts for the furnishing of all printing and stationery as may be needed for the collegiate portion of the New York City school system.

13. Defendant, Abraham Rabinowitz, as Comptroller, New York City Board of Higher Education, is responsible for ordering payments from funds held by or allocated to the Board of Higher Education.

14. The defendant, Board of Education, is an agency created by the New York State Legislature to control and operate the elementary and high schools of the City of New York (McKinney's Education Law, § 2590, *et seq.*). In exercising its duties, defendant expends city, state and federal funds for the operation and maintenance of the schools under its jurisdiction, including the expenditure of said funds for the purchase of printing.

15. Defendant, James F. Regan, as President of the Board of Education for the City of New York, and all of the individually named Board members, have the power and authority to exercise general supervisory control of the functions and activities of all administrative departments of said Board of Education, including the Department of Purchase.

16. Defendant, Sol Berger, as Director of Purchasing for the New York City Board of Education, is charged with the responsibility and duty of letting and awarding contracts for the furnishing of all printing and stationery as may be needed for schools under the Board's jurisdiction.

17. The defendant, New York City Health and Hospital Corporation, is a body corporate and politic constituting a public benefit corporation created by the New York State Legislature to provide health and medical services and operate facilities and hospitals in the City of New York (McKinney's Unconsolidated Laws, § 7380, *et seq.*). In exercising its duties, the defendant expends city, state and federal funds for the operation and maintenance of health facilities and hospitals under its jurisdiction, including the expenditure of said funds for the purchase of printing.

18. Defendant, John Holloman, as President of the New York City Health and Hospital Corporation, and all of the individually named Board members, have the power and the authority to exercise general supervisory control of the functions and activities of all of the administrative departments of the New York City Health and Hospital Corporation, including the Department of Procurement.

19. Defendant, Leonard Katz, as Director of Procurement for the New York City Health and Hospital Corpora-

tion, is charged with the responsibility and duty of letting and awarding contracts for the furnishing of all printing and stationery as may be required by the New York City Health and Hospital Corporation.

20. Defendant, Robert J. Bradbury, as Comptroller, New York City Health and Hospital Corporation, is responsible for ordering payments from funds held by or allocated to the New York City Health and Hospital Corporation.

21. Each defendant is sued individually and in his official capacity. Relief is sought against each and all defendants as well as their agents, assistants, successors, employees, attorneys and all persons acting in concert or cooperation with them or at their direction.

## Class Action

22. This is a class action brought by Master Printers of America on behalf of itself and on behalf of the approximately 300 printing establishments in the metropolitan area of New York City who are its members and who employ over 8,000 employees who are not members of or represented by any labor organization, and on behalf of approximately 2500 other such printing establishments in the metropolitan New York City area similarly situated, all pursuant to the provisions of § 23(a) and § 23(b)(2) of the Federal Rules of Civil Procedure. In the alternative, this class action is brought by Design Distributors, Inc., Image Carrier Corporation and Howard Schubert Company, Inc. on behalf of themselves and on behalf of approximately 2800 other printing establishments in the metropolitan New York City area whose employees are not members of or represented by any labor organization, all pursuant to the provisions of Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. The class is

so numerous that joinder of all members is impracticable. The members of the class thus represented are all similarly affected by the action of the defendants in maintaining restrictive bidding specifications and restrictive operating bid procedures for the printing of city, state and federally-financed books, materials, and other printed items which prohibits the submission of bids by or the awarding of contracts to those printing establishments whose employees are not represented by labor organizations. The common questions of fact in this action are that the employees of all class members are not represented by labor organizations and that because of this fact, plaintiffs as a class are injured by the defendants' uniform, constant and common practice of restricting such class members from bidding upon or being awarded printing contracts, such bidding and awards being exclusively confined to those printing establishments whose employees are represented by a labor organization and who can produce the union label. The common question of law in this proceeding is whether said practices as employed by defendants deprive the class members of their constitutional rights. The members of Master Printers of America and the other-named plaintiffs fairly and adequately protect the interests of the class in that their employees are not represented by any labor organization and they are unable to produce the union label.

The individual members of Master Printers of America and the other-named plaintiffs and those others similarly situated have been and are now employed and engaged in various phases of the production of printed material, performing such works for public and private firms, corporations and entities. As such, each of them has the right to be able to bid upon printing work awarded by publicly-supported agencies funded by federal, state and city monies.

FACTUAL ALLEGATIONS

23. The monetary value of printing contracts awarded under the direction of each of the defendants annually is in excess of $100,000.

24. Defendants, City of New York, Abraham D. Beame, Robert Cohen and Harrison Goldin, discharge all purchasing functions for the City of New York regarding the letting and awarding of printing contracts pursuant to a "Supplement to Standard Instructions to Bidders for Use in Printing Only" (23-L-46), paragraph 5 of which states:

> "UNION LABEL.—Unless otherwise specified in the schedule, all work must be done in a union printing plant located within the city of New York. The union label must appear on all printing except letterheads, noteheads and any other printing excepted in the schedule."

Pursuant to the foregoing provision, said defendants have followed the general custom, practice and policy of awarding printing contracts only to those printing establishments whose employees are represented by a labor organization and who are able to exhibit the union label.

25. Defendants, New York City Board of Higher Education, Alfred A. Giardino, Chairman of the Board, and all of the individually-named Board members, Francis McGivney and Abraham Rabinowitz, discharge all purchasing functions for said Board of Higher Education regarding the letting and awarding of printing contracts pursuant to a resolution of June 18, 1963, requiring that "in all printing contracts, the specifications therein shall provide as follows:

> "UNION SHOPS AND UNION LABEL.—unless otherwise specified in the schedule, all work must be done in a union printing plant. The union label must appear on all printing except letterheads, noteheads, and any other printing excepted in the schedule."

Pursuant to the foregoing resolution, said defendants, have followed the general custom, practice and policy of awarding printing contracts only to those printing establishments whose employees are represented by a labor organization and who are able to exhibit the union label.

26. Defendants, New York City Health and Hospital Corporation, John Holloman, as President of the New York City Health and Hospital Corporation, and all of the individually-named Board members, Leonard Katz and Robert Bradbury, discharge all purchasing functions for the New York City Health and Hospital Corporation regarding the letting and awarding of printing contracts pursuant to a policy requiring that "Letter press, or offset printing and all accessory operations must be done in a Union Printing Plant located within the City of New York. The Union Label must appear on all printed forms required hereunder." Pursuant to the foregoing requirement, defendant, New York City Health and Hospital Corporation, has followed the general custom, practice and policy of awarding printing contracts only to those printing establishments whose employees are represented by a labor organization and who are able to exhibit the union label.

27. Defendants, New York City Board of Education, James F. Regan, President of said Board, and all of the individually-named Board members, and Sol Berger, discharge all purchasing functions for said Board of Education regarding the letting and awarding of printing con-

tracts pursuant to the general policy, practice and custom of awarding said contracts only to those establishments whose employees are represented by a labor organization and who are able to exhibit the union label.

28. Defendants, through the above-mentioned customs, practices and policies of awarding printing contracts only to those establishments whose employees are represented by a labor organization and who are able to exhibit the union label, have arbitrarily and capriciously excluded members of plaintiff, Master Printers of America, the named plaintiffs, and all other similarly situated establishments from bidding upon and being awarded printing contracts by tax-supported public bodies for the reason that their employees are not represented by a labor organization. Said practices are contrary to public policy and unless defendants are enjoined from such practices, they will continue to maintain and operate said unlawful restrictions and limitations upon fair and competitive bidding.

29. The practice, custom and actions of the defendants on the basis of the facts hereinabove set forth and as shown in the attached exhibit, deprive the members of the plaintiff, Master Printers of America, the other-named plaintiffs and other printing establishments similarly situated, of equal employment and contract opportunities in violation of the rights secured to them by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States; said custom, practice and actions of the defendants further deny to the employees of members of plaintiff, Master Printers of America, the named plaintiffs and all other printing establishments similarly situated, the rights guraranteed them in 29 U.S.C. § 157, to select or reject a labor organization to represent them.

30. The above described actions, practices and conduct of said defendants have caused, and unless permanently enjoined, will further result in irreparable injury to the members of the plaintiff, Master Printers of America, the named plaintiffs, and the class thereby represented, and all other printing establishments similarly situated and the employees of all said establishments. There is no complete, adequate or speedy remedy of law to compensate plaintiffs or the members of the class they represent or their employees for the injury which they are presently sustaining as a result of the practice, custom and actions of the defendant or for the injuries they will sustain as a result of the restricted bidding limitations as followed by defendants.

WHEREFORE, the plaintiffs pray:

(1) That the actions, practices and customs of the defendants restricting fair and competitive bidding by denying the rights of printing establishments whose employees are not represented by labor organizations, be declared unconstitutional, null and void.

(2) That the defendants, and all persons acting as their agents, officers, employees, servants or attorneys, or under their direction or authority, be permanently enjoined and restrained from restricting bidding upon public printing contracts to establishments whose employees are represented by labor organizations.

(3) That the court declare that the customs, practices and actions of the defendants are in conflict with the provisions of 29 U.S.C. § 157 as well as the Fourteenth Amendment to the United States Constitution and that the defendants be permanently enjoined from operating or maintaining a system restricting fair and competitive bidding on public contracts.

(4) For such other and further relief as to the court may seem just and proper and for plaintiffs' costs in this matter expended.

HUGH P. HUSBAND, JR.
Hugh P. Husband, Jr.
Attorney For Plaintiffs

Of Counsel:

COUDERMAN, CASEY & LOOMIS

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## Order of MacMahon, J., dated January 13, 1975.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

L.F.M.
Civil Action
File No. 74 Civ. 3155

MASTER PRINTERS OF AMERICA, a division of Printing Industries of America, Inc., a District of Columbia non-profit corporation on behalf of itself and certain of its members, et al.,

Plaintiffs,

v.

NEW YORK CITY, NEW YORK CITY BOARD OF HIGHER EDUCATION, NEW YORK CITY BOARD OF EDUCATION, NEW YORK CITY HEALTH AND HOSPITAL CORPORATION,

Defendants.

ORDER

This cause coming on to be heard on the motion of Menagh, Trainor & Rothfeld, Attorneys for Allied Print-

ing Trades Council of Greater New York, for leave to appear as a party to and to intervene as a defendant in this action, and the Court having considered said motion and the answer tendered therewith, and it appearing to the Court that notice of said motion has been duly served on all parties to this cause and that the said Allied Printing Trades Council of Greater New York is entitled to become a party and should be permitted to intervene as prayed, and the Court being fully advised in the premises, it is

ORDERED that Allied Printing Trades Council of Greater New York have leave to intervene in this cause and is hereby made a party thereto, and to that end may file its said answer within ten days from the date of this order in the same manner and with like effect as if named an original party to this cause.

LLOYD F. MACMAHON
United States District Judge

MICROFILM
Jan 15 1975

Dated: New York, N. Y.
January 13, 1975

## Answer of Intervenor Allied Printing Trades Council.

ANSWER OF INTERVENOR ALLIED PRINTING TRADES COUNCIL OF GREATER NEW YORK

The Intervenor, Allied Printing Trades Council of Greater New York, having answered the complaint in Civil Action No. 74 Civ. 3155, answers the complaint in Civil Action No. 75 Civ. 6443 as follows:

1. In answer to Paragraph 1 of the complaint, Intervenor denies that this action is properly brought under the provisions of 28 U.S.C. Section 2201 or that the plaintiffs are entitled to a declaratory judgment under said provisions; denies that plaintiffs are entitled to injunctive relief as requested; denies that this Court has jurisdiction under the provisions of Title 28 U.S.C. Section 1343 (3); denies that any alleged rights sought to be protected herein are rights secured by the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Constitution of the United States.

2. In answer to Paragraphs 2, 3, 4, 5, 18, 19, 20, 21 and 22 of the complaint, Intervenor does not have sufficient information to admit or deny the allegations with respect to the operations of the plaintiffs.

3. In answer to Paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the complaint, Intervenor admits the allegations contained therein except denies that the defendants expend significant amounts of federal funds for the purchase or furnishing of printing or stationery and denies that Alfred A. Giardino is Chairman of the New York City Board of Higher Education.

4. In answer to Paragraphs 23 and 24 of the complaint, Intervenor denies that the defendants have acted arbi-

trarily or capriciously or have acted in a manner contrary to public policy or that the regulations are unlawful or render the bidding unfair, and denies that plaintiffs are deprived of equal employment opportunities, and denies that the printing contract opportunities are rights secured by the Fourteenth Amendment.

5. Intervenor denies the allegations of Paragraphs 25 and 26 of the complaint.

FOR A FIRST SEPARATE AND COMPLETE ANSWER

For a Separate and Complete Answer to the Complaint herein, Intervenor alleges:

## Answer of Intervenor Allied Printing Trades Council.

1. Allied is an unincorporated association composed of the following organizations:

Bookbinders' Union No. 25B

Bindery Women's Union No. 43B

Paper Cutter's & Bookbinders Union No. 119B

New York Lithographers and Photo-Engravers' Union No. 1-P,

all affiliated with Graphic Arts International Union;

New York Newspaper Printing Pressmen's Union No. 2

New York Printing Press Assistants & Offset Workers Union No. 51

New York Printing Press Assistants & Offset Workers Union No. 23

New York Paper Handlers' & Straighteners' Union No. 1

Stereotypers Union No. 1

Electrotypers Union No. 100,

all affiliated with International Printing & Graphic Communications Union of North America;

Typographical Union No. 6

Mailers Union No. 6

both affiliated with International Typographical Union.

2. Each of the organizations which compose Allied is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act, as amended (29 U.S.C. § 152(5) and Section 501(3) of the Labor-Management Relations Act of 1947 (29 U.S.C. § 142(3)). All of these labor organizations have their headquarters in New York City and are engaged in representing individuals employed in the printing trades in New York City. All of these organizations are local unions affiliated with international unions, each of which international unions is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act, as amended, and Section 501(3) of the Labor-Management Relations Act of 1947. Each of these international unions is composed of affiliated local unions throughout the United States, engaged in the collective bargaining representation of employees in the printing industry.

3. The labor organizations which compose Allied have a total of approximately 26,000 members who are employed by several hundred printing companies in the State of New York. Each of the local unions which compose Allied

is the designated representative of appropriate units of employees for the purposes of collective bargaining with said companies within the meaning of Section 9 of the National Labor Relations Act, as amended (29 U.S.C. § 159) and each has been recognized as such by the companies. Pursuant to such recognition, each of the local unions is, and for many years has been, party to collective bargaining agreements with the companies, governing wages, hours and other conditions of employment of the employees in said collective bargaining units.

4. Large numbers of said employers are members of Printers League Section, Printing Industries of Metropolitan New York, Inc., with which the respective local unions which compose Allied negotiate collective bargaining agreements.

5. The local unions which compose Allied have been engaged in collective bargaining representation of the employees in the printing industry in the City of New York for many years. During that time, such local unions have succeeded in establishing, through collective bargaining, a body of high standards of workmanship, production reliability, and working conditions for their members. Central to maintaining these standards are apprenticeship programs, training programs, and schools for the advancement of said programs, administered by the unions or by joint committees consisting of employer and union representatives established pursuant to the described collective bargaining agreements for the purpose of establishing and administering standards and guidelines to ensure the highest quality of craftsmanship by employees of said employers.

6. By virtue of the union representation of their employees, employers are entitled to enter into license agree-

ments for the use of the union label of Allied, acting through Allied as its local representative for that purpose.

7. Allied, the local unions composing Allied, and the International Unions with which each of said local unions is affiliated have engaged in extensive programs of public education to alert the consuming public to the value and the importance of insisting upon the performance of printing by union labor as a symbol and evidence of the performance of work by trained craftsmen and of the fact that the work has been performed under the terms and conditions of employment embodied in collective bargaining agreements.

8. A substantial number of the employers in the City of New York with which the local unions composing Allied, have collective bargaining agreements, are presently engaged in the performance of printing work for the defendants. Large numbers of other employers who are parties to such collective bargaining agreements have in the past either entered bids for, or have performed, such work and plan to continue to enter such bids from time to time. The extent to which said employers are able to continue offering employment to employees in the units represented by the local unions composing Allied, and are able to maintain and improve the standards of wages, hours and other conditions of employment for said employees, may be affected by the availability to the employers of work performed or to be performed pursuant to contracts with the defendants.

9. Allied and the locals composing Allied all have an important interest in preserving and improving the standards of wages, hours and other terms and conditions of employment, and maintaining and advancing the standards of craftsmanship and training, of the employees in the units represented by them.

10. Allied, the local unions composing Allied, and the International Unions with which each of said local unions

is affiliated, all have an important and valuable interest in the union labels referred to above, in promoting the recognition and acceptance of said labels, and in protecting and extending consumer understanding of the significance and the value to the consumer of having such labels on printed products.

11. All of the said interests referred to in Paragraph 5 through 10 above may be impaired and impeded if relief as requested by plaintiffs were granted. Moreover, if the relief requested in the complaint were granted, the said local unions and their members would suffer irreparable damage in that employment and employment benefits resulting from the retention of the defendants as a customer or potential customer of employers with whom said local unions have collective bargaining contracts may be permanently lost.

12. It was within the lawful discretion of the defendants' agents to determine, with respect to the items to be procured pursuant to the exhibits attached to the complaint, the specifications of which, in the judgment of said agents would assure performance of the work and delivery of the product in accordance with the needs and policies of the defendants.

13. By reason of the special values, assurances of craftsmanship, assurance of satisfactory working conditions collectively bargained on behalf of the employees, assurance of freedom from labor disputes for the durations of said collective bargaining agreements, effectuation of the public policy of the State of New York and other benefits to the defendants, resulting from such a specification, the inclusion of a specification that the printing work covered by said exhibits attached to the complaint be performed by employees working under a collective bargaining agreement constituted a reasonable exercise of the discretion described in Paragraph 12 above. Such specification was

not in violation of any rights under the Fourteenth Amendment to the Constitution of the United States.

14. Interference, under color of the laws or Constitution of the United States with the exercise of the discretion described in Paragraph 12 above, solely because, in the exercise of said discretion an agent of a defendant has determined that the advantages of requiring that the printing work on the said jobs be performed by employees working under a collective bargaining agreement, warranted a specification of such a requirement, would be in violation of the Tenth Amendment to the Constitution of the United States, and would deprive Intervenor and its members of the rights secured to them by the Due Process Clause of the Fifth Amendment and by the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Constitution of the United States.

FOR A SECOND SEPARATE AND COMPLETE ANSWER

For a second separate and complete Answer to the complaint herein, Intervenor alleges:

1. The complaint herein fails to allege that Plaintiffs or any member of Plaintiffs would have been a successful bidder but for said alleged actions or policies.

2. The complaint fails to allege any actual or justiciable controversy within the jurisdiction of this Court.

WHEREFORE, Intervenor prays that the complaint herein be dismissed.

Respectfully submitted,

MENAGH, TRAINOR & ROTHFELD

By: DONALD F. MENAGH
Donald F. Menagh

MENAGH, TRAINOR & ROTHFELD

## Notice of Motion for Dismissal of Complaint.

SIRS:

PLEASE TAKE NOTICE that, upon the annexed affidavit of Donald F. Menagh, sworn to on the 16th day of January, 1975, and the annexed summons and complaint herein, the undersigned will move this Court before the Honorable Lloyd F. MacMahon, Judge, at the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, on the 24th day of January, 1975, at 2:15 p.m. in the afternoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing the complaint on the grounds that:

1. This Court must defer to the exclusive primary jurisdiction of the National Labor Relations Board.

2. Plaintiff lacks the legal capacity to bring this action.

3. This Court should abstain from exercising such jurisdiction as it may possess, particularly since plaintiffs have failed to exhaust State remedies.

4. Plaintiff lacks standing to bring this action.

5. The complaint fails to state a proper class action.

6. The complaint fails to state a claim upon which relief can be granted;

and for such other and further relief as to the Court may seem just and proper.

MENAGH, TRAINOR & ROTHFELD

By: Donald F. Menagh
DONALD F. MENAGH
Attorney for Defendant ALLIED
PRINTING TRADES COUNCIL OF GREATER
NEW YORK

To:

HUGH P. HUSBAND, JR., Esq.
Attorney for Plaintiffs

COUNIHAN, CASEY & LOOMIS, Esqs.
Of Counsel to Plaintiffs

ADRIAN P. BURKE, Esq.
Corporation Counsel
Attorney for Defendants
NEW YORK CITY, et al

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**Affidavit of Donald F. Menagh, Read in Support of Defendants' Motion.**

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

DONALD F. MENAGH, being duly sworn, deposes and says:

1. I am an attorney representing the Defendant-Intervenor. I have become familiar with the proceedings herein based upon my study of the papers heretofore filed and my legal research herein.

2. The Complaint seeks an order declaring that the municipal defendants' practice of restricting bidding on printing contracts to printers whose employees are represented by labor unions is unconstitutional, and permanently enjoining such practice.

3. I respectfully submit this affidavit in support of defendants' motion for an order dismissing the within action pursuant to Rule 12(b) of the Federal Rules of Civil Procedure on the grounds that (a) this Court must defer

to the exclusive primary jurisdiction of the National Labor Relations Board, (b) plaintiff lacks the legal capacity to bring this action, (c) this Court should abstain from exercising such jurisdiction as it may possess, particularly since plaintiffs have failed to exhaust State remedies, (d) plaintiff lacks standing to bring this action, (e) the complaint fails to state a proper class action, and (f) the complaint fails to state a claim upon which relief can be granted.

4. My contention that the National Labor Relations Board has primary jurisdiction of 29 USCA 157, upon which the plaintiffs principally rely, is based upon the authorities cited in my Brief and upon knowledge based upon substantial practice before the National Labor Relations Board.

5. My contention that the plaintiff, Master Printers of America, lack legal capacity to sue is based upon the authorities cited in my Brief. Even absent the cited authorities, it stands to reason that any division of an artificial statutory creation such as a non-profit membership corporation has a heavy burden of proving its statutory entitlement to bring any suit. The corporate entity of which Master Printers of America is a division itself would have to establish that such suit was within its corporate purposes. Master Printers of America has proffered no such proof.

6. With respect to my invocation of the doctrine of abstention, this Court, of course, has substantial discretion to determine whether it should abstain from taking jurisdiction of this case at this time. Such exercise of discretion is reviewable, however, to the extent suggested in *Citizens For A Better Environment, Inc.* v. *Nassau County,* CA2 438 F. 2d 1353 (1973), cited in my Brief.

There appears to be no Federal connection with the facts complained of; while plaintiffs allege that the municipal defendants expend Federal funds for printed documents, I have thus far been unable to confirm the correctness of this allegation.

7. With respect to my contention that the plaintiffs lack standing, research indicates that while the requirements on standing recently have been liberalized somewhat on behalf of rejected bidders—in matters arising under Federal statute intended to be reviewed in Federal Courts—no precedent justifies conferring standing upon the plaintiffs. Giving standing to the plaintiffs would invite a flood of litigation, unjustifiably.

8. Plaintiffs have moved for an order determining this to be a class action, to include some 2500 employers who have not indicated any interest in this matter.

I respectfully urge this Court to treat my argument in the Brief in support of dismissal on the ground that plaintiffs have failed to state a proper class action, as an answer to plaintiffs' Motion.

9. This action also is dismissable on the ground that the plainiffs have failed to state a claim upon which relief can be granted. Plaintiffs ground their case upon "public policy" that the municipal defendants allegedly violated. Since, as the statutes cited in my Brief establish, prevailing wage rates for government contracts are part of both Federal and New York State public policy, and since the union label is a reasonable method of policing prevailing New York City requirements, plaintiffs have stated no cause of action.

It is, therefore, respectfully requested that this Motion be granted and Order issue dismissing the Complaint.

(Sworn to by Donald F. Menagh, January 16, 1975.)

## Notice of Motion to Dismiss Amended Complaint.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavits of Nathan Ratner and Caesar C. Altomare both sworn to the 17th day of January, 1975 and the annexed summons and amended complaint herein, the undersigned will move this Court at a Motion Part thereof to be held in Room 706 at the United States Courthouse, Foley Square in the Borough of Manhattan, City of New York on the 7th day of February, 1975 at 2:15 o'clock in the afternoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing the amended complaint on the grounds that:

1. The complaint fails to state a claim upon which declaratory and injunctive relief can be granted;

2. Plaintiff Master Printers of America lacks standing to institute this action;

3. The Court lacks jurisdiction of the subject matter because the amount in controversy is insufficient for each of the plaintiffs and for such other and further relief as to the Court may seem just and proper.

Dated:
January 17, 1975

Yours, etc.,

ADRIAN P. BURKE
Corporation Counsel
Attorney for Defendants

To:

HUGH P. HUSBAND, Esq.
Attorney for Plaintiffs

COUNIHAN, CASEY & LOOMIS, Esqs.
Counsel to Attorney for Plaintiffs

MANAGH, TRAINOR & ROTHFELD
Attorneys for Allied Printing
Trades Council of Greater
New York, Intervenor

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## Affidavit of Nathan Ratner, Read in Support of Defendants' Motion.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

Nathan Ratner, being duly sworn, deposes and says:

I am an attorney in the office of Adrian P. Burke, Corporation Counsel of the City of New York and attorney for the defendants and am familiar with the proceedings herein and the facts and circumstances of this matter based on the records in the files of the Corporation Counsel's office.

I respectfully submit this affidavit in support of the defendants motion for an order dismissing the within action pursuant to Rule 12(b) of the Federal Rules of Civil Procedure on the grounds that:

1. Plaintiffs have failed to state a claim upon which declaratory and injunctive relief can be granted;

2. Plaintiffs lack standing to institute this action;

3. The Court lacks jurisdiction of the subject matter because the amount in controversy is insufficient for each of the plaintiffs.

The action was initially commenced by service of the summons and complaint on or about July 24, 1974. On the defendant, the City of New York (sued herein as New York City), the Board of Higher Education of the City of New York (sued herein as New York City, Board of Higher Education) the Board of Education of the City of New York (sued herein as the New York City Board of Education) and New York City Health and Hospitals Corporation. Thereafter plaintiffs amended their summons and complaint by adding the individual defendants now made party defendants herein. Service of the amended pleading was initially made on November 19, 1974, and completed upon all the defendants on December 4, 1974.

## Facts

This class action seeks a declaratory judgment pursuant to 28 U.S.C. Sec. 2201, declaring unconstitutional certain practices and policies of the defendants, which plaintiffs allege restrict public bidding upon, and awarding of, printing contracts to those printing establishments employing union labor and whose printing plants are located within New York City and thereby discriminate against establishments employing non-union labor and whose plants are not in New York City. In addition, plaintiffs seek a permanent injunction restraining defendants from maintaining the alleged restrictive and discriminatory practices and policies.

Plaintiffs invoke 28 U.S.C. Sec. 1343 (3) and 1331(a) as conferring jurisdiction of this Court to redress the

alleged deprivation of their rights secured by the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States and 29 U.S.C. Sec. 157, the Labor Law.

The cause of action thus, subject to the jurisdiction of this Court is one created by 42 U.S.C. Sec. 1983, which provides for equitable redress of the deprivation of rights guaranteed by the Federal Constitution and laws.

It is alleged in the amended complaint that plaintiff, Master Printers of America, is a trade association of commercial printers representing over 30,000 printing companies in the United States, whose employees are not represented by any labor union, over 300 of which are located in the metropolitan area of New York City (Paragraph 2 of the amended complaint). This class action is brought on behalf of this trade association, its 300 members in the New York City area and approximately 2,500 other establishments, similarly located and situated, all employing non-union labor (Paragraph 22).

In the alternative, this class action is also brought by the named plaintiffs, Design Distributors Inc., Image Carrier Corporation and Howard Schubert Company, Inc., all printing companies located in the metropolitan area of New York City and employing non-union labor and on behalf of approximately 2,800 other companies similarly located and situated (Paragraph 22).

The facts and circumstances of the matter are these:

It has been the policy of the City and its agencies that all printing, excluding certain inexpensive kinds, be done by a union shop located in the City of New York. This policy first originated by an order of Mayor Fiorello H. LaGuardia in 1934, to alleviate the high rate of unemployment that confronted the union printing employees. Much of the contracted printing was leaving the City and being done by non-union shops. The printing industry

found itself in dire circumstances, and financially troubled firms were either leaving the City or closing down.

Through the years, this policy has been beneficial to the City and its agencies. Attached hereto is the affidavit of Caesar C. Altomare, Director of Purchase in the Bureau of Purchase of the City of New York setting forth the many benefits accruing to the City and the public by reason of this policy.

It is submitted that the policy challenged herein has resulted in a reasonable and rational classification not violative of the Equal Protection clause of the Fourteenth Amendment. Nor is the Amendment's Due Process clause a bar to the regulation, as the policy is not arbitrary or capricious, and is a valid exercise of the police power.

Plaintiff, Master Printers of America, as a trade association has no standing to institute suit in its own right nor can it assert others' rights in a Civil Rights action.

Further, the Court has no jurisdiction under 28 U.S.C. § 1331, as each defendant has not met the jurisdictional amount in controversy.

It is, therefore, respectfully requested that this motion be granted and the amended complaint be dismissed.

(Sworn to by Nathan Ratner, January 17, 1975.)

## Affidavit of Caesar C. Altomare, Read in Support of Defendants' Motion.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

Caesar C. Altomare, being duly sworn, deposes and says:

I am the Director of Purchase in The Bureau of Purchase of the Municipal Service Administration of the City of New York and submit this affidavit in support of defendant's motion herein.

I have been Director since 1970, having joined this Department in 1941. I am in charge of and supervise all purchases for the City of New York, including printing. As part of my supervisory duties all bids on printing contracts (all contracts over $2500) are referred to me for approval of award of contract or rejection of bid. Thereafter my recommendation is forwarded to the Commissioner of Purchase for final action.

The City of New York and its agencies, have adopted a policy that all job printing of regular flat form cards, booklets, and pamphlets be manufactured by union shops located in the City of New York. Included among the bid specifications is the requirement that all such printing carry a union label. This label, called a "bug" and each order for printing, carries the following: the Department of Purchase requisition number, the date of printing, and the union shop number listed with the labor organization of which a particular union is a member, and the units printed.

Excepted from the policy requiring union made printing are the following items: continuous and snapout forms, tab cards, envelopes and letterheads and other similar types of less expensive printing, which do not require a union label and need not be printed by a union shop. These can be printed outside New York City, where many, if not

most, of the plants are located. This printing does not require skillful work nor, must it be done as quickly as does the other printing.

This policy of limiting the flat form, more expensive printing to union shops located in New York City had its origin in the Depression years of the 1930's. During those years, the printing industry was suffering from the general economic decline, resulting in unemployment of enormous proportions. Also, much of the printing work was being processed outside the City of New York, thereby worsening the situation with which union members were confronted.

Mayor Fiorello H. LaGuardia, therefore, ordered that all flat form printing let by the City and its agencies must be printed with a union label by union shops located in the City.

This was intended to alleviate the stark conditions confronting the industry. Local union printers were out of work without any hope of relief, as a result of the printing contracts being let to firms outside New York City.

Many advantages have been obtained from the policy. For one thing, the New York Labor Law, sec. 220 mandates that all public works contracts must include a provision that the contractor shall pay to its employees the prevailing wage rate current in the industry and locality. Printing contracts are not included in the Labor Law. As unions provide decent wages to workers, the requirement that plants employ union labor affords the printers a means of obtaining, through union contracts, prevailing wage rates that other workers are receiving under the Labor Law.

Further, the Administrative Code of the City of New York, Sec. 93-1.0(2) provides that the Comptroller of the City of New York audit all accounts and payments on City contracts. An audit of printing contracts would ascertain whether the plant is in fact employing union printers and whether the printing is being done in New York City.

The union label is, therefore, a good and practical tool in overseeing that the contractor is properly performing under the contract and not farming out the work at cheaper rates than those prevailing under union contracts.

Collusive practices had also developed, where contractors had learned of the total amount of units of printing required by the City for particular jobs. The City hopes to get lower prices by letting out the contracts in stages.

Much of the City's printing requires speed and high quality work. Deadlines must be met and completed, sometimes within several days and at other times even overnight. This would occur on jobs such as printing minutes of the Board of Estimate and City Council; special printing needs for the Department of Franchise; Board of Election ballots (court orders are often issued at the latest moment directing immediate changes and inclusions of candidates on the ballot), City Planning documents on site selection, and other numerous special work.

An important phase of the printing problem is the need for high quality work. By resorting to union labor, the City benefits from the unions' many training programs, including stringent and exacting and highly specialized apprenticeship training, so as to provide a ready source of highly skilled employees with technical expertise. This high quality, efficient and speedy work avoids delay and duplication.

Further, a pool of union shops is created from which the City is assured of qualified bidders on its printing contracts. The monies expended on printing contracts let by the Department of Purchase are almost wholly derived from taxes levied and received by the City of New York. Federal funds and New York State funds expended on printing contract let by this department are in each instance less than $25,000 annually. These Federal and State funds are a miniscule portion of the total approxi-

mate ten ($10,000,000) millions of dollars expended on printing contracts.

Furthermore, by far, the greatest cost in a printing contract is the labor cost, and there are frequent requests for over-time work. The existence of the labor contracts in a union plant limits the City's liability for over-time, because of the fixed parameters of over-time wages. Non-union plants are in a position to hold the City for exorbitant labor costs.

In all the policy of requiring printing to be done in City located union shops, under union label, benefits the City and its agencies.

(Sworn to by Caesar C. Altomare, January 17, 1975.)

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## Affidavit of Donald E. Sommer, Read in Opposition to Defendants' Motion.

AFFIDAVIT

STATE OF VIRGINIA
COUNTY OF ARLINGTON } ss.:

DONALD E. SOMMER, being duly sworn deposes and says:

I am Executive Vice President of Master Printers of America, one of the plaintiffs in the above-styled case. Master Printers of America is a trade association of open-shop printing establishments located throughout the United States. Master Printers of America has approximately three hundred members located in the New York City metropolitan area. This affidavit is made as supplement to plaintiffs' opposition to the motion to dismiss filed by the defendants.

*Affidavit of Donald E. Sommer.*

I have dealt extensively with all facets of the printing industry for thirty-nine years.

In 1936 I was employed by R.R. Donnelley & Sons, Chicago, Illinois, the country's largest commercial printer. My first position was that of a standards estimator, which included studying work operations in determining quality, time and cost standards for all major printing processes, including letter press, lithography and gravure. I also conducted studies with respect to paper usage, waste, quality and printing problems. I advanced with this company to the position of Manager of the Methods and Standards Department. My responsibilities included supervising forty to sixty engineers and craftsmen in compiling and evaluating the data that had been obtained concerning the above-mentioned matters. Sheet-fed presses and web-fed presses were studied and evaluated extensively. These presses ranged in size from a small 14″ x 20″ to giant 77″ presses. These presses printed one, two, four, and up to ten colors. The paper used ranged from low cost, uncoated (such as newsprint) to all the highest cost and quality coated sheets used in the industry. It was also my responsibility to compile and evaluate data concerning composition, camera, plate making and binding and finishing operations.

In 1953, I joined Printing Industries of America as Technical Director, responsible for the compilation of industry data on quality and production standards. I was directly responsible for the production of the book entitled "PIA Production PAR". Industry standards for "business forms" were engineered and published under my supervision. These data are applied in union, as well as non-union, printing establishments.

The above unique, broad and very intimate knowledge and experience in the commercial printing industry is particularly beneficial when dealing with the subject matter of the instant proceedings.

*Affidavit of Donald E. Sommer.*

It is my opinion that the reasons cited by defendants for requiring the union label as a condition to a printing company receiving a printing contract cannot be supported by industry experience or current facts. It is well-known that within the wide range of cost and quality factors in printing, the least expensive and easiest to meet quality criteria will be jobs of type and simple line cuts, using one color of ink, mostly black, and printed on relatively lower cost newsprint and uncoated stock of recognized normal basic weight. This is true whether the job is printed on small, medium or large presses using sheets or rolls of paper. In other words, the expense (cost) of printing increases as the quality of the paper is upgraded and when the number of colors required increases to two or four or more. Continuous and snap-out forms, tab cards, envelopes and letterheads requiring only one color will require similar quality requisites and will be just as "expensive" as sheet-fed one-color jobs, consisting of booklets and pamphlets. The present New York City purchasing policy distinction of "expensive-less expensive" referred to by Mr. Altomare cannot be accepted, in my opinion, as a valid reason for the present allocation of union label work.

My knowledge of industry craft training programs in union and non-union printing establishments reveals that there are effective training programs in both kinds of establishments. To conclude otherwise would belie the fact that satisfied customers are the final judges of quality. Non-union printing establishments make up in excess of 60% the printing plants in the printing industry. Such establishments must have skilled craftsmen in order to continue to meet the critical demands of customers who could easily choose a union establishment if the union craftsman was so clearly superior. Granting the fact that some printing unions have correspondence courses, joint apprentice training committees and classrooms in New York City or Colorado Springs, Colorado, this in no way

proves that the open-shop craft training manuals, or the open-shop craft training courses in plants or association offices, or the open-shop certification of craftsmen, are less effective ways of developing competent craftsmen.

The Printing Pressmen's Union, acknowledging lack of success, closed their printing school at Tennessee Home, Tennessee, many years ago. The Bookbinders Union formal training activities are very modest, at best. The Typographical Union's school is an excellent one; however, it is obviously not convenient to New York's members of this Union since it is located in Colorado Springs, Colorado.

The research in new technologies, problem solving, new equipment, etc., is handled in our industry by the Graphic Arts Technical Foundation in Pittsburgh, Pennsylvania. This outstanding organization shares its findings with unions and open-shop employers and employees alike. Their training materials, visual aids, books, and technical seminars are available to all who participate and are part of both union and open-shop training activities.

From my broad experience, I conclude that training is adequate and effective in non-union plants as well as in union plants. Unions have no special source of knowledge, nor a unique, secret training skill unavailable to open-shop employees. Union members are endowed with no different inherent capacities, intelligence, or skills other than open-shop employees.

My experience, based on knowledge of the operations of hundreds of printing plants, union and non-union, can support in no instance an assumption that somehow a unionized plant provides better service than one without a union. Work studies will show that "service" is a function of items such as the work load in a plant, the availability and adaptability of equipment and paper, the priority listing of all the jobs in the plant, the availability of needed skilled craftsmen, the attitude or policy of the

Chief Executive of the company, and the distance the printing plant is from the customer. In my opinion, unionization of employees is not a relevant factor in determining the quality of service rendered.

With respect to the inflated overtime charges noted by Mr. Altomare, it is my understanding, from my experience, overtime penalty wage costs are seldom considered in an original bid. If the customer's requirements are so demanding in terms of delivery date, a customer will always be told in advance that overtime penalties will be added to the price. The customer must agree to overtime cost charges or the printer must deliver the job at the price he bid when the customer awarded the printing contract. Thus, the only way the City of New York, or any other customer, would be legally responsible for paying for overtime charges would be when the City agreed with the printer to pay for the overtime. This is general industry practice whether the company is union or not. It is my opinion that the Director of Purchase can control additional charges for overtime regardless of whether a union or non-union printing establishment is awarded the contract.

From my extensive experience in the printing industry, it is my opinion that the union label cannot be used to guarantee, in any manner whatsoever, that a particular printing job will be of better quality than if the same job was performed by a non-union printing establishment.

(Sworn to by Donald E. Sommer, February 10, 1975.)

## Affidavit of Richard V. Whalen, Read in Opposition to Defendants' Motion.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

RICHARD V. WHALEN, being first duly sworn, deposes and says:

I am Richard V. Whalen, and am Executive Vice President of the Master Printers Section, of Printing Industries of Metropolitan New York. I make this affidavit in connection with the Answer of the plaintiffs, to the motion to dismiss in the case of Master Printers of America et al vs. New York City et al, 74 Civ. 3155.

The Master Printers Section of the Printing Industries of Metropolitan New York, has a membership composed exclusively of printers whose employees are not represented by any union. There are approximately 300 member firms belonging to the Master Printers Section.

In order to provide our member firms with highly specialized apprenticeship training, Master Printers Section established the Master Printers Apprentice & Craftsman Training School Program 22 years ago. This school has, for all that period, provided in-plant training in all aspects of printing. The school year for the program is divided into a fall and a spring session, with each session running for sixteen weeks and offering a total of approximately 80 hours of training in each course given by the school per session. The courses are taught by trained craftsmen who are paid for their services as instructors. Herewith listed are a sampling of the types of courses made available through the MPS Apprentice & Craftsman Training School Program: Copy Preparation—Multilith—Offset Presswork—Camera—Advanced Camera—Offset Stripping—Letterpress Folding Machine Operation & Paper Cutting and Color Matching.

The students taking these courses are graded by their instructors, and those who successfully complete the course

are given a certificate of accomplishment, with special awards being given to outstanding graduates of various courses. The importance of the school is shown by the fact that thousands of employees have taken these courses, for which the employer sending the employee must pay a tuition fee.

Because of the fact that the printing industry is very technologically oriented, the need for continuing education and development is very great. This need is reflected by the fact that many of the courses given by our school are in advanced aspects of printing, which are attended by employees who are skilled themselves, but desire to further increase their knowledge of the sophisticated equipment utilized in printing to the mutual benefit of both themselves and their employer.

The success of the school and the high quality of training that it has is further indicated by the fact that we frequently receive calls from printing firms whose employees are represented by unions requesting that their employees be allowed to take some of the courses given by the school.

By virtue of my position as Executive Vice President of the Master Printers Section of Printing Industries of Metropolitan New York, I am familiar with the wages and fringe benefits of member firms of the Master Printers Section, and am also familiar with the wages and fringe benefits negotiated by various unions active in the graphic arts industry.

Based on this knowledge, I can state that there are Master Printer Section member firms which pay wages and fringe benefits that are equal to or surpass the wages and fringe benefits negotiated by various unions active in the graphic arts industry.

(Sworn to by Richard V. Whalen, February 13, 1975)

**Affidavit of Hugh P. Husband, Read in Opposition to Defendants' Motion to Dismiss.**

STATE OF NEW YORK }
COUNTY OF SUFFOLK } SS.:

HUGH P. HUSBAND, JR., being first duly sworn, deposes and says:

1. I am an attorney licensed to practice law in the State of New York and am a member of this Bar and am counsel for all named plaintiffs in this proceeding and am fully familiar with the proceedings herein and all facts and circumstances relating to this matter.

2. I respectfully submit this affidavit in opposition to defendants' motions for an order dismissing this action pursuant to Rule 12(b) of the Federal Rules of Civil Procedure.

3. This is a class action commenced by plaintiffs on July 24, 1974 and amended by action taken on November 15, 1974 seeking a declaratory judgment pursuant to 28 U.S.C. Section 2201 declaring unconstitutional the policy and practice followed by the defendants in restricting the bidding upon and the awarding of city, state and federally financed printing contracts, only to those establishments whose employees are represented by labor organizations and who can exhibit a union label. In addition, plaintiffs seek a permanent injunction restraining defendants from maintaining those restrictive and discriminatory practices and policies.

4. Plaintiffs have invoked the jurisdiction of this Court pursuant to the provisions of 28 U.S.C. Sections 1331 (a) and 1343(3), to redress the deprivation of their rights secured by the due process and equal protection clauses of

the 14th Amendment of the Constitution of the United States and 29 U.S.C. Section 157, and plaintiffs allege that the matter in controversy involves rights of a value in excess of $10,000, exclusive of interest and costs.

5. On November 15, 1974 plaintiffs filed with this Court an amended complaint pursuant to Rule 15(a) and (c) of the Federal Rules of Civil Procedure, naming the responsible "persons" of the originally named defendant bodies as defendants. On November 19, 1974 this Court issued an Order permitting the plaintiffs to file said amended Complaint and on that date the defendants withdrew their previous motion for an Order dismissing plaintiffs' original complaint. On November 19th this Court issued an Order setting December 13, 1974 as the return date for any motions to dismiss by defendants directed at plaintiffs' amended complaint, and setting said date as the return date for plaintiffs' motion for an order of the court to have the action declared a class action pursuant to Rule 23(c) of the Federal Rules of Civil Procedure. By stipulation of the parties approved by this Court, the return date for all of the foregoing motions was extended to February 14, 1975.

6. On January 15, 1975 this court issued an Order permitting the intervention as permissive intervenors of the Allied Printing Trades Council of Greater New York. On said date this Court also issued an Order directing that any motions to dismiss by the intervenors would be returnable at the same time as the motions with that aim, that were to be filed by the original defendants. By stipulations of the parties approved by this Court, said date was extended to February 14, 1975.

7. It is respectfully submitted that a long line of federal and state judicial decisions have held it to be uncon-

stitutional and against public policy for municipalities and state agencies (1) to classify business establishments with which the city or state is doing business on the basis of their being unionized or not, and (2) to refuse to do business with the non-union firms while doing business exclusively with those firms whose employees were unionized. Within the last month another United States District Court had issued an injunction against such a practice (see appendix A to plaintiffs' memorandum of law) in a case involving jurisdictional allegations identical to those present here, and no federal courts have ever upheld the validity of such a practice by a state, agency or a municipality. A long line of state court decisions have consistently directed municipalities, states and state agencies to refrain from enforcing regulations or statutes which disqualified non-union business firms from doing business with the municipality, state or administrative body.

8. The defendants confuse and complicate the matter before this court in many ways. First, the defendants confuse the simple issue that is before this court by claiming that plaintiffs are challenging the defendants' policy of requiring that vendor printing plants be located within New York City (see affidavit of Nathan Ratner dated January 17, 1975 at page 2). In fact, plaintiffs' complaint is quite explicit in challenging only the discriminatory practice based on the unionization, or lack thereof, of a firm's employees. Plaintiffs recognize that a city or a state may legally discriminate in awarding city or state business on the basis of location, i.e., establishing preferred treatment for their own resident businesses (see American Yearbook Company vs. Askew, discussed in Point I of plaintiffs' memorandum of law). But the state or city which has the right to restrict particular business to its own residents, cannot make an invidious and arbitrary

classification of discrimination amongst those residents. Thus, while New York City could limit itself to doing business with New York City firms, it could not discriminate between those New York City firms by requiring that it would do business only with New York City firms that were completely staffed by black, male, female or white employees. Similiarly, the defendants cannot legally make a classification between firms that is the issue in this case: The unionization, or lack of it, of the firms' employees.

9. The defendants further confuse a basically simple issue by ignoring the many federal and state decisions that have held the nonunion-union classification of businesses to be invalid as unconstitutional and against public policy. Defendants instead rely on irrelevant decisions upholding a state's "eight hour day" requirement and validating a "prevailing wage" requirement, neither of which concepts plaintiffs are concerned with, or have any objection to.

10. For judicial support of the defendants' practices at issue here, defendants can rely only on two New York lower court decisions, neither of which directly dealt with the validity of excluding nonunion printers from being able to do business with defendants. The first of these (Amalithone Realty Corp. vs. New York City, see plaintiffs' Memorandum of Law, page 4) dealt only with the validity of the city's requirement for printing contracts which specifically discriminated in favor of employers whose employees were represented by the unions of the Allied Printing Trades Council (the intervenors herein) and which held that to be an invalid classification. The second decision relied on by defendants (Burland Printing Company v. LaGuardia, see plaintiffs' Memorandum of Law, page 4) dealt only with the punishment to be levied

upon a unionized printer who had subcontracted printing work to be done for the city to nonunion printers. The relevance of those lower court decisions is further weakened by the fact that their approval, in dicta, of a "union label" requirement occurred in the mid-'30's, before the passage of much of the federal, state and city legislation governing minimum wages, overtime and other working conditions which of themselves guarantee that the city will not ever have to deal with "sweat shop employers".

11. The intrinsic inconsistencies and self contradictions of the defendants' position is shown by their utilization of the "union shop" requirement, only for a portion of the printing they buy, thus specifically acknowledging that nonunion printing firms are capable of doing, and do regularly perform, the printing work for a great mass of printing bought by the defendants. As the affidavit of Donald E. Sommer (attached to plaintiffs' Memorandum of Law) indicates, there is no valid basis for distinguishing between union and nonunion printing plants, as such, regarding the quality of printing produced. The defendants acknowledge that this is true for much of the printing they purchase (see affidavit of Leonard Katz, submitted by defendants).

12. Defendants further confuse the issue by attempting to equate union shop requirement as a form of "prevailing wage". In fact, because of the variances between the wage and benefit requirements in various union contracts (see Howard Schubert affidavit attached to plaintiffs' Memorandum of Law), the fact that a union represents a printing firm's employees gives absolutely no assurance as to the wages and benefit levels of the employees at that company. Moreover, the employees of many nonunion plants are at wage and benefit levels comparable to or above the

wages and benefits required under various union contracts (see Richard V. Whalen affidavit attached to plaintiffs' Memorandum of Law).

13. The defendants' various justifications for their use of the union shop requirement (which they apply only intermittently) ignores the realities of the printing industry. For example, they speak of the "training" given at union plants, completely neglecting the comprehensive programs of training specifically established for nonunion plants (see Richard V. Whalen affidavit attached to plaintiffs' Memorandum of Law), and the excellent training facilities available to both union and nonunion printers (see Donald E. Sommer affidavit attached to plaintiffs' Memorandum of Law).

14. As the foregoing facts show, there is no rational basis for a "union label" requirement nor for the classification of printing establishments into "nonunion" and "union" categories as a means of achieving the "objectives" claimed by the defendants (see plaintiffs' Memorandum of Law on page 9 et seq.). The insincerity of defendants' concern for those "objectives" is shown by the defendants' willingness to decree that great masses of printing work done for the defendants can be done in nonunion plants (see Leonard Katz affidavit submitted by defendants). In fact, as is shown by *Amalithone* decision (see plaintiffs' Memorandum of Law, pg. 4), relied on by Defendants, the Defendants' practice at issue began as a political concession to favor those printers whose employees were represented by unions belonging to, and able to exhibit the union label of, the Allied Printing Trades Council of Greater New York. The fact that it has been modified by the city over the years, either in response to legal mandate (see *Amalithone supra*) or to the realities of the printing in-

dustry (see Leonard Katz affidavit *supra*) does not diminish the inherent unconstitutionality of the arbitrary and invalid classification which defendants attempt to justify.

15. It is respectfully submitted that the other objections raised by the defendants and intervenors to plaintiffs' amended complaint are of no weight, as set forth more specifically in paragraphs 16 to 21 of this affidavit.

16. As is set forth at Point II of plaintiffs' accompanying Memorandum of Law, plaintiff, Master Printers of America, does have the capacity and the standing to maintain this action under applicable federal precedents.

17. For the reasons set forth at Point III of plaintiffs' Memorandum of Law, plaintiffs contend that there is absolutely no basis for any involvement of the National Labor Relations Board in this proceeding and there is therefore no basis for this court to defer its jurisdiction of this proceeding to the National Labor Relations Board.

18. For the reasons set forth at length at Point IV of plaintiffs' Memorandum of Law, there is no basis in this proceeding for this court to invoke the doctrine of abstention. That doctrine applies where questions of state law are to be resolved, and in this case the rights alleged are clearly federal in origin, as has been recognized by the two federal courts which have recently upheld the plaintiffs' contentions in similar situations (see appendix A and Point I of plaintiffs' Memorandum of Law).

19. The claim of intervenors that the complaint did not allege proper grounds for a class action is refuted by plaintiffs' Memorandum of Law in support of its class action motion under FRCP Section 23(c)(1) and its memorandum

of law in reply to the defendants' opposition to that motion.

20. Under applicable federal precedent, which is presented at Point VI of plaintiffs' Memorandum of Law, it is clear that plaintiffs do in fact satisfy the jurisdictional amount requirement of 28 U.S.C. Section 1331.

21. On the basis of the relevant federal authorities cited and analyzed at Point VII of plaintiffs' Memorandum of Law, it is quite clear that the amended complaint states a cause of action.

It is therefore respectfully requested that defendants' and intervenors' motions for an order, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, dismissing the complaint, be denied.

(Sworn to by Hugh P. Husband, Jr., February 13, 1975).

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## Affidavit of Donald Menagh, Read in Support of Defendants' Motion to Dismiss.

State of New York }
County of New York } ss.:

Donald F. Menagh, being duly sworn, deposes and says:

1. As counsel to Allied Printing Trades Council of Greater New York, I respectfully submit this Affidavit in reply to plaintiffs' Affidavit and Memoranda submitted in opposition to defendants' motion for an order pursuant to Rule 12(b) FRCP dismissing the complaint.

2. The main thrust of the plaintiffs' papers (Memorandum, Point I) is that the municipal defendants' practice of

restricting bidding for certain printing work to printers whose employees are represented by labor unions violates their rights secured by the Fourteenth Amendment. While we strongly disagree with this contention, we have not submitted a brief on this question, deeming same to be premature. The thrust of our motion to dismiss is that this Court need not and should not address itself to the merits of plaintiffs' constitutional argument and should dismiss this complaint upon the grounds urged.

3. In answer to our contention (Brief, Point 1) that this Court must defer to the National Labor Relations Board, the plaintiffs (Memorandum, Point III) denied that "29 U.S.C. § 157 is the basis of this suit". The complaint clearly shows that it is grounded upon 29 U.S.C. § 157 and upon the Fourteenth Amendment. The plaintiffs' Memorandum goes on to suggest that the doctrine of primary jurisdiction is limited to conflicts between the States and the National Labor Relations Board. Said Memorandum errs. The National Labor Relations Board has primary jurisdiction of any matter which is found "arguably" covered by 29 U.S.C. § 157 or 29 U.S.C. § 158, and Federal Courts as well as State Courts must defer in the first instance to the National Labor Relations Board.

4. In answer to our contention (Brief, Point 2) that plaintiffs lack the legal capacity to bring this action, plaintiffs urge (Memorandum, Point II) that they have such capacity, while totally ignoring the thrust of our argument, which is based upon New York State statutes and decisional law.

5. In answer to our contention (Brief, Point 4) that plaintiffs lack standing to sue, the plaintiffs' Memorandum (Point II) does not answer our arguments, and plaintiffs rely primarily upon Judge Marovitz' Decision in *Master*

*Printers Association, etc.* v. *Board of Trustees, etc., et al.,* 356 F Supp. 1355 USDC ND Ill. 1973. To the extent that Judge Marovitz may have intended his Decision to apply to the factual situation before this Court in the instant case, I respectfully urge that said Decision not be deemed persuasive.

6. In answer to our contention (Brief, Point 3) that this Court should abstain from exercising such jurisdiction as it may possess, plaintiffs (Memorandum, Point IV) make the following specious arguments:

a) Plaintiffs suggest that the doctrine of abstention applies only when questions of State law need be resolved, but cites no authority for the parameters of this limitation.

b) Plaintiffs continue to hedge as to whether or not the municipal defendants' practices allegedly violate State public policy or Federal public policy, or both.

c) Plaintiffs argue that "it is not material" whether or not defendants' conduct is condoned or is illegal under State law. At this late stage of this proceeding, plaintiffs should not be permitted to continue to hedge as to this legal contention.

d) Plaintiffs conclude that exhaustion of State remedies cannot be made a prerequisite for Federal relief since there are no State remedies to exhaust "because there are no applicable state laws or procedures". Our Brief (Point 3, pp. 7-9) sets forth the contrary.

7. In answer to our contention (Brief, Point 5) that the complaint fails to state a proper class action, plaintiffs incorrectly state (Memorandum, Point V) that they dealt with *all* our arguments thoroughly in their Memoranda in support of their class action motion. Said Memoranda

make no mention of Rule 23.2 FRCP relating to matters of unincorporated associations, in connection with our argument that plaintiff Master Printers of America may not bring a class action because it does not claim to represent *all* the members of its own corporation. Nor does said plaintiff deny that its Memoranda did not set forth a scintilla of interest by any of the approximately 2500 non-member printers which said plaintiff seeks to represent. Nor did plaintiffs' Memoranda make reference to the "similar situation" test referred to in our Brief.

8. Plaintiffs papers do not effectively refute our contention (Brief, Point 6) that the complaint fails to state a claim upon which relief can be granted.

9. With respect to Federal public policy as set forth in Federal statutes, plaintiff denies (Memorandum, pp. 13-14) that under the Walsh-Healy Public Contracts Act, the Davis-Bacon Act and the Service Contract Act of 1965, the union label is equivalent to the prevailing wage rate, since the Secretary of Labor must determine the prevailing wage rate. We do not urge that the union label is legally equivalent to the prevailing wage rate, but rather that it usually is factually equivalent thereto. This contention the plaintiffs do not deny.

10. With respect to New York State public policy, plaintiffs do not deny, and, in fact their papers make no reference to, our contention that New York State labor law and public policy are the most pro-union labor relations laws in the United States, and that they foster collective bargaining to an unusual degree. Nor did plaintiffs' papers make reference to New York State's union label statutes.

11. We therefore are not required to deal with a situation where Federal and State public policy conflict. Fed-

eral public policy is not shown to conflict with New York State public policy here. Indeed, as noted above, plaintiffs continue to refrain from stating whether the municipal defendants' practice accords or conflicts with New York State public policy.

12 Finally, the plaintiffs rely upon Judge Morgan's preliminary injunction order (Memorandum, Exhibit A) in support of their contention that the union label requirement violates the United States Constitution. Judge Morgan's Order cannot be deemed authority applicable to this case since:

a) Judge Morgan, of course, is bound by such decisions of the Seventh Circuit as may be applicable to the issue before him.

b) We do not know which of defendants' arguments were submitted to Judge Morgan.

c) Illinois Law and public policy differ greatly from New York Law and public policy with respect to collective bargaining and union labels.

d) Judge Morgan's Order did not involve a class action.

e) The plaintiff in said action was a bidder who was found to have sustained actual verifiable damages.

It is, therefore, respectfully requested that this Motion be granted and Order issue dismissing the Complaint.

(Sworn to by Donald F. Menagh, February, 1975.)

## Affidavit of Caesar Altomare, Read in Support of Defendants' Motion to Dismiss.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

CAESAR C. ALTOMARE, being duly sworn, deposes and says:

I am the Director of Purchase in the Bureau of Purchase of the Municipal Service Administration of the City of New York.

This affidavit is submitted in support of defendants' motion to dismiss the amended Complaint herein and in reply to the opposition submitted by plaintiffs.

Reference to the defendants' policy has been made in plaintiffs' memorandum of law in opposition to this motion (page 1, note 1), that "the defendants have, in fact, awarded printing contracts to, and request bids from, printing establishments located outside the limits of New York City, notwithstanding their self-declared policy of attempting to protect City printing establishments from financial ruin."

Only flat form, cards, booklets and pamphlets must be printed by union shops located in the City of New York.

Other printing, consisting of continuous and snapout forms, tab cards and envelopes need not carry a union label. Continuous and snapout work is more automated and is not as varied as flat form printing.

It should be noted that at least ninety (90%) percent of the continuous and snapout work is done in plants located outside the City of New York. While printing contractors may have offices in the City, many have their plants outside New York and in various other sections of the country.

There are comparatively few large snapout, continuous or tab card manufacturers located within New York City. Therefore in these areas, the City would deny itself of the most competitive firms should it extend the requirement of the union label to this form of printing.

Out of necessity, and not out of any capricious or arbitrary policy, the Department of Purchase must resort to plants located outside the limits of the City; be they union or non-union shops. Since this type of work must be done outside these City limits, the classification of union-non-union shops can no longer be effectively maintained with regard to continuous and snapout printing. As a result over ninety (90%) percent of this printing is done outside New York City.

(Sworn to by Caesar C. Altomare, March 4, 1975.)

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## Memorandum Decision of MacMahon, J.

MacMahon, *District Judge.*

Plaintiffs, Master Printers of America (Master Printers), Design Distributors, Inc. (Design Distributors), Image Carrier Corporation (Image Carrier), and Howard Schubert Company, Inc. (Schubert), move under Rule 23(c)(1), Fed.R.Civ.P., for class action determination. Defendants, New York City (City), several of its officials, several of its agencies, and certain of their officials, and defendant intervenor, Allied Printing Trades Council of Greater New York (Allied), oppose the motion and cross-move under Rule 12(b), Fed.R.Civ.P., for an order dismissing the action as to plaintiff Master Printers for lack of standing, and dismissing the amended complaint for failure to state a claim. Defendants also cross-move for an order dismissing the action as to plaintiffs Design Distributors and Schubert for lack of standing, and as to all plaintiffs for lack of subject matter jurisdiction under 28 U.S.C. § 1331.

Allied premises its cross-motion to dismiss on the following additional grounds: (1) the court must defer to the exclusive primary jurisdiction of the National Labor Relations Board (NLRB) in this action; (2) the court should abstain from exercising jurisdiction because this action should have been brought in the state courts; (3) Master Printers lacks legal capacity to bring this action; and (4) the amended complaint fails to state a proper class action.

We first turn to identification of the parties and a discussion of the facts surrounding these motions.

Plaintiff Master Printers is a trade association of commercial non-unionized printing firms. Approximately 300 members of Master Printers, as well as the individual printing firms, Design Distributors, Image Carrier, and Schubert, are engaged in the printing business in and around the city.

The city, its agencies and officials named as defendants, regulate the bidding for publing printing contracts. Defendant intervenor, Allied, is an organization of printing unions which do printing for the City and its agencies.

Plaintiffs seek to enjoin and to declare unconstitutional defendants' admitted practice of limiting bidding on contracts for "flat form printing"[1] to unionized printing firms located within the city. Defendants contend, however, that there is a rational basis for each restriction in that flat form printing requires a high level of expertise which can only be supplied by unionized printers and the location requirement helps the City to attain speed in the performance and inspection of printing jobs which must often be done on short notice. Defendants do not impose either the union or the location requirement on bidders for "rotary printing,"[2] the other type of printing performed for them, because this type of printing does not require the expertise essential for flat form printing.

Although plaintiffs originally challenged as unconstitutional both the union requirement and the location require-

ment, plaintiffs have conceded in their reply papers that the location requirement is reasonable and constitutional[3] and now argue that enforcement of the union requirement alone violates their constitutional rights. We, therefore, strike the allegation in the amended complaint which claims that the location requirement is unconstitutional.

## Primary Jurisdiction and Abstention

The amended complaint alleges that the union requirements denies plaintiffs' employees the right to accept or reject union representation guaranteed to them by § 7 of the National Labor Relations Act (Act), 29 U.S.C. § 157. Allied argues that this pleading admission requires us to defer to the exclusive primary jurisdiction of the NLRB.[4] We cannot, however, classify defendants' conduct as coming within § 7 merely because allegations in the amended complaint are conclusory. More importantly, since § 2(2) of the Act excludes a municipality and its agencies from coverage under the Act, defendant's conduct could not be classified within § 7.[5]

We conclude, therefore, that we need not defer to the NLRB in this matter, and we strike the allegation in paragraph 29 of the amended complaint which alleges that defendants' practice denies plaintiffs' employees their § 7 rights.

Allied also contends that we should abstain from exercising jurisdiction because our ruling on the constitutionality of the union requirement may involve interpretation of § 103 of the General Municipal Law of the State of New York[6] requiring competitive bidding on public contracts and awards to the "lowest responsible bidder." Allied argues that this phrase could be interpreted by the state courts to exclude non-union printers and, therefore, a state court ruling could avoid the necessity for federal consti-

tutional adjudication of the union requirement. This contention is without merit because New York courts have consistently interpreted the phrase "lowest responsible bidder" in § 103 to include non-union shops.[7]

Allied has, thus, failed to show that interpretation of § 103 by the state courts would avoid the necessity of federal constitutional adjudication of the challenged practice, and we need not abstain from exercising our jurisdiction in this action.[8]

We next turn to discussion of defendants' and Allied's motions to dismiss as to certain plaintiffs for lack of standing and subject matter jurisdiction.

STANDING

Defendants contend that Design Distributors and Schubert lack standing because they have no personal stake or interest in the outcome of this action, as required by Article III, and, therefore, there is no case or controversy as to them.

As noted earlier, plaintiffs have conceded that the location requirement is constitutional and only challenge the constitutionality of the union requirement. Defendants argue that, since these firms are located outside the city, they could not qualify to bid on the printing contracts even if the union requirement were struck down and, therefore, they have no interest in whether the union requirement is unconstitutional. We agree and dismiss the action as to Design Distributors and Schubert.

Defendants and Allied next argue that plaintiff Master Printers, which is suing on behalf of its individual members, lacks standing under the Civil Rights Act, 42 U.S.C. § 1983. It is well established that an association does not have standing under 42 U.S.C. § 1983 and its jurisdictional implementation, 28 U.S.C. § 1343(3), to sue for violations

of the rights of its members unless the association itself has been injured by the alleged unconstitutional conduct.[9] Since it is undisputed that Master Printers is suing for alleged violations of the constitutional rights of its members and not for any violation of a right peculiar to it as an association, it lacks standing under § 1343(3) to challenge the union requirement.

SUBJECT MATTER JURISDICTION

Defendants next contend that all plaintiffs have failed to establish subject matter jurisdiction under 28 U.S.C. § 1331. In order to establish subject matter jurisdiction under this section, the amended complaint must allege that each member of the class can assert a claim against defendants in excess of $10,000.[10]

The amended complaint does not allege that each member of the class can assert a claim against defendants in excess of $10,000. Indeed, upon examining the amended complaint, we observe that none of the named plaintiffs assert a claim in excess of $10,000. We conclude, therefore, that neither the plaintiffs nor the members of the class have shown subject matter jurisdiction under 28 U.S.C. § 1331.

We have concluded that Design Distributors and Schubert do not have standing to challenge the union requirement; that Master Printers does not have standing under the Civil Rights Act, 42 U.S.C. § 1983, and its jurisdictional counterpart, 28 U.S.C. § 1343(3); and that none of the plaintiffs has established subject matter jurisdiction under 28 U.S.C. § 1331.[11] The result is that Image Carrier, which is suing defendants for alleged violations of due process and equal protection under 42 U.S.C. § 1983 and its jurisdictional counterpart, 28 U.S.C. § 1343(3), is the only plaintiff with both standing[12] and a basis for jurisdiction.

The Civil Rights Act, 42 U.S.C. § 1983, allows redress for deprivations of constitutional rights by "persons" acting under color of state law, but the City and its agencies are not "persons" within the meaning of § 1983.[13] We, therefore, lack subject matter jurisdiction over them under § 1343(3) and dismiss the amended complaint as to them *sua sponte,* leaving only the officials as defendants in this action.

## Rule 12(b)(6) Motion

We next turn to defendants' and defendant intervenor's motion to dismiss for failure to state a claim. Rule 12(b)(6), Fed.R.Civ.P. These parties argue that the union requirement does not violate the non-unionized printers' constitutional rights because only union printers have the skill necessary to perform flat form printing.

Upon a motion under Rule 12(b)(6), the amended complaint must be construed in the light most favorable to plaintiff and its factual allegations taken as true.[14] Our inquiry is thus limited to whether the allegations state a claim.

The amended complaint alleges that plaintiff Image Carrier and the other printing firms similarly situated are prevented from bidding on City contracts for flat form printing solely because they are not unionized. Allegations of such discrimination definitely state a claim for relief.[15] We, therefore, deny Allied's and defendant's motion to dismiss under Rule 12(b)(6).

## Class Action Motion

If plaintiffs can satisfy the requirements of Rule 23(a) and Rule 23(b)(3), plaintiffs' motion for class determination should be granted.

The threshold questions to be determined concerning plaintiffs' Rule 23 motion are (1) whether Image Carrier is a member of the class having a claim against defendants, and (2) whether the requirements of Rule 23(a)(1) have been met.

This class action was originally brought on behalf of all non-union printing firms located in and around the city to declare unconstitutional both the union requirement and the location requirement. Plaintiffs thereafter conceded that the location requirement was constitutional but continued to assert that the union requirement was unconstitutional. This concession has the effect of narrowing the definition of the putative class to non-unionized printers located within the city. Since Image Carrier is a non-unionized printing firm located within the city, it clearly is a member of the putative class.

Rule 23(a)(1) requires a positive showing by plaintiff that the members of the putative class are so numerous as to make it impracticable to bring them all before the court.[16] As was the situation in *Demarco* v. *Eders*, 390 F.2d 836 (2d Cir. 1968), the evidence here as to the size of the class and the impracticability of joinder is purely speculative.[17]

Plaintiff, Image Carrier, has utterly failed to show that the members of the putative class, consisting of non-union printers located in the city and possessing the requisite skill for doing flat form printing, are so numerous that their joinder is impracticable. We conclude, therefore, that Image Carrier has failed to meet the requirements of Rule 23(a)(1) and cannot maintain this action as a class action.[18]

Accordingly, we deny: (1) plaintiffs' motion for an order that this action be maintained as a class action; (2) defendants' and defendant intervenor's cross-motions for an order dismissing the amended complaint for failure

to state a claim; and (3) defendant intervenor's cross-motion to dismiss on the following grounds: (a) the court must defer to the exclusive primary jurisdiction of the NLRB in this action; (b) the court should abstain from exercising jurisdiction because this action should have been brought in the state courts; (c) Master Printers lacks the legal capacity to bring this action; and (d) the amended complaint fails to state a proper class action. We grant: (1) defendants' cross-motion to dismiss as to plaintiffs Design Distributors and Schubert for lack of standing and as to all plaintiffs for lack of subject matter jurisdiction under 28 U.S.C. § 1381; and (2) defendants' and defendant intervenor's cross-motions to dismiss as to plaintiff Master Printers for lack of standing under 28 U.S.C. § 1343(3). We dismiss as to defendant City and its agencies *sua sponte* for lack of subject matter jurisdiction under 28 U.S.C. § 1343(3).

So ordered.

Dated: New York, N. Y.
August 22, 1975

LLOYD F. MACMAHON
LLOYD F. MACMAHON
United States District Judge

FOOTNOTES

[1] "Flat form printing," also called "flat bed printing," is printing performed on a printing press in which a flat bed holding the printing form moves against a revolving cylinder which carries the paper. The Random House Dictionary of the English Language (1969).

[2] "Rotary printing" is printing performed on a printing press in which the type or plates to be printed are fastened upon a rotating cylinder and are impressed on a continuous roll of moving paper. The Random House Dictionary of the English Language (1969).

[3] See affidavit of plaintiffs' attorney, Hugh P. Husband, Jr., sworn to February 13, 1975, and plaintiffs' reply brief.

[4] *San Diego Bldg. Trades Council* v. *Garmon,* 359 U.S. 236 (1959).

[5] The exclusion of the City and its agencies from the definition of "employer" in § 2(2) of the Act, 29 U.S.C. § 152(2), has the practical effect of excluding these entities from coverage under the Act.

[6] Allied also contends that a ruling on the constitutionality of the union requirement would involve interpretation of the Printing Law of the State of New York. However, that law regulates only the agencies and officials of the State of New York and has no application to the City and its agencies and officials, and, therefore, we need not interpret it when we rule on the constitutionality of the union requirement.

[7] *Apex Indus. Constr. Corp.* v. *Village of Lake George,* 31 A.D. 2d 670, 295 N.Y.S.2d 548 (1968); *Long Island Signal Corp.* v. *County of Nassau,* 51 Misc.2d 320, 273 N.Y.S.2d 188 (1966).

[8] *Harman* v. *Forssenius,* 380 U.S. 528, 534-36 (1965).

[9] *Aguayo* v. *Richardson,* 473 F.2d 1090 (2d Cir. 1973), *cert. denied,* 414 U.S. 1146 (1974).

[10] *Zahn* v. *International Paper Co.,* 414 U.S. 291 (1973); *Center for United Labor Action* v. *Consolidated Edison Co.,* 376 F. Supp. 699 (S.D.N.Y. 1974). See also *Aguayo* v. *Richardson, supra.*

[11] Since we have held that plaintiff, Master Printers, does not have standing under § 1343(3), nor a basis of subject matter juris-

diction under § 1331, we need not deal with Allied's contention that Master Printers lacks the legal capacity to bring suit because it is a division of a corporation and not a separate legal entity.

[12] There is no doubt that Image Carrier, as a potential bidder on flat form printing contracts, has standing to challenge the constitutionality of the union requirement, as foreclosure from an opportunity to bid can result in legal injury sufficient to establish standing. *Ballerina Pen Co.* v. *Kunzig,* 453 F.2d 1204 (D.C. Cir. 1970); *Master Printers Ass'n* v. *Board of Trustees of Junior College Dist. No. 508, City of Chicago and State of Ill.,* 356 F. Supp. 1355 (N.D. Ill. 1973).

[13] *City of Kenosha* v. *Bruno,* 412 U.S. 507 (1973); *Monroe* v. *Pape,* 365 U.S. 167 (1961).

[14] *Jenkins* v. *McKeithen,* 395 U.S. 411 (1969).

[15] See *Anthony P. Miller, Inc.* v. *Wilmington Housing Authority,* 165 F. Supp. 275 (D. Del. 1958); *Master Printers Ass'n* v. *Board of Trustees of Junior College Dist. No. 508, City of Chicago and State of Ill., supra; Apex Indus. Constr. Corp.* v. *Village of Lake George, supra.*

[16] *Demarco* v. *Eders,* 390 F.2d 836, 845 (2d Cir. 1968).

[17] See also *Cannon* v. *Texas Gulf Sulfur Co.,* 53 F.R.D. 216 (S.D.N.Y. 1971).

[18] Allied's contention that we must dismiss the amended complaint because it does not allege a proper class action is totally without merit. Image Carrier can maintain this action on an individual basis even though class action status has been denied.

## Summons.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action
No. 75 Civ. 6443
Judge Griesa

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THE HOUSE OF LITHOGRAPHY, INC., a corporation,

ASSOCIATED LITHO LETTER SERVICE, INC., a corporation,

and

DEVEN LITHOGRAPHERS, INC., a corporation,

Plaintiffs,

v.

ABRAHAM D. BEAME, Mayor of New York City,

ROBERT COHEN, Commissioner of Purchase of New York City,

HARRISON GOLDIN, Comptroller of New York City,

ALFRED A. GIARDINO, Chairman, New York City Board of Higher Education,

DR. GUERSTON GOLDIN, VINCENT R. FITZPATRICK, FRANKLIN H. WILLIAMS, MRS. GUSTAVE HAUSER, HAROLD JACOBS, VINIA R. JOHNSON-QUINONES, ISIAH E. ROBINSON, JR., Members, New York City Board of Higher Education,

FRANCIS MCGIVNEY, Director of Purchase, New York City Board of Higher Education,

ABRAHAM RABINOWITZ, Comptroller, New York City Board of Higher Education,

ISIAH E. ROBINSON, JR., President, New York City Board of Education,

STEVEN AIELLO, ROBERT CHRISTIAN, DR. AMELIA ASHE, JOSEPH G. BARKAN, JOSEPH MONSERRAT, Members, New York City Board of Education,

*Summons.*

SOL BERGER, Director of Purchasing, New York City Board of Education,

JOHN HOLLOMAN, President, New York City Health and Hospital Corporation,

JUNE J. CHRISTMAS, M.D., FRANK FOLK, M.D., VERNAL G. CAVE, M.D., DANIEL J. PAULO, M.D., LOWELL E. BELLIN, M.D., PAUL GIBSON, JAMES DUMPSON, CHARLES J. BENSLEY, DONALD H. ELLIOT, MILTON F. KIRSCHMAN, WILLIAM MICHAELSON, ELENA PADILLA, Members, Board of Directors, New York City Health and Hospital Corporation,

ROBERT J. BRADBURY, Comptroller, New York City Health and Hospital Corporation, and

LEONARD KATZ, Director of Procurement, New York City Health and Hospital Corporation,

Defendants.

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To the above named Defendants:

You are hereby summoned and required to serve upon Hugh P. Husband, Jr., whose address is Main Street, Bridgehampton, New York 11932, Plaintiffs' attorney, an answer to the Complaint which is herewith served upon you, within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, Judgment of Default will be taken against you for the relief demanded in the Complaint.

s/ RAYMOND F. BURGHARDT
Clerk of Court

[Seal of Court]

Date: Dec. 23, 1975

Note: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

## Complaint.

Come now the plaintiffs, Collehan-Saunders Corp., The House of Lithography, Inc., Associated Litho Letter Service, Inc., and Deven Lithographers, Inc., and for their cause of action against the defendants state:

### Jurisdiction and Nature of Case

1. This is an action for declaratory judgment under the provisions of 28 U.S.C. § 2201, seeking to declare unconstitutional the policy and practice followed by each and all of the defendants in restricting the bidding upon and awarding of printing contracts to only those establishments whose employees are represented by labor organizations and who can exhibit the union label. Plaintiffs further seek a permanent injunction enjoining defendants from prohibiting the bidding upon or the awarding of city, state and federally-financed printing contracts only to those printing establishments whose employees are represented by labor organizations and who can exhibit the union label. Jurisdiction of this court is invoked pursuant to the provisions of Title 28 U.S.C. § 1343(3), this being a suit in equity authorized by law to be brought to redress the deprivation under power of state statute, ordinance, regulation, custom, or usage of rights, privileges and immunities secured by the Constitution and the laws of the United States or by any Act of Congress providing for the equal rights of citizens. The rights here sought to be protected are rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

### Parties

2. Plaintiff Collehan-Saunders Corp. is incorporated in the State of New York, and has its principal place of busi-

ness at 170 Varick Street, New York, New York. The employees of Collehan-Saunders Corp. are not represented by a labor organization, and the Company cannot exhibit the union label.

3. Plaintiff The House of Lithography, Inc., is incorporated in the State of New York, and has its principal place of business at 24-08 Jackson Avenue, Long Island City, New York. The employees of The House of Lithography, Inc., are not represented by a labor organization, and the Company cannot exhibit the union label.

4. Plaintiff Associated Litho Letter Service, Inc., is incorporated in the State of New York, and has its principal place of business at 525 West 45th Street, New York, New York. The employees of Associated Litho Letter Service, Inc., are not represented by a labor organization, and the Company cannot exhibit the union label.

5. Plaintiff Deven Lithographers, Inc., is incorporated in the State of New York, and has its principal place of business at 31-10 Hunterspoint Avenue, Long Island City, New York. The employees of Deven Lithographers, Inc., are not represented by a labor organization, and the Company cannot exhibit the union label.

6. Defendant Abraham D. Beame is Mayor of New York City and is the city's chief executive officer. He has the power and authority to exercise general supervisory control of the functions and activities of all administrative departments of New York City, including the Department of Purchase.

7. Defendant Robert Cohen is the Commissioner of Purchase for New York City. He is charged with the responsibility and duty to carry out the functions of the Depart-

ment of Purchase, and has authority to let and award contracts for the furnishing of all printing and stationery as may be needed by the agencies of New York City.

8. Defendant Harrison Goldin is the Comptroller for New York City. He is responsible for ordering payments from city funds, including payments for the furnishing of all printing and stationery as may be needed by the agencies of New York City.

9. Defendant Alfred A. Giardino is Chairman of the Board of Higher Education for New York City. He, and all of the individually named Board members, have the power and authority to exercise general supervisory control of the functions and activities of all administrative departments of the City Board of Higher Education, including the Department of Purchase. In exercising their duties they expend city, state and federal funds for the maintenance, operation and development of city colleges under the Board's jurisdiction, including the expenditure of funds for the making and purchase of printing.

10. Defendant Francis McGivney is the Director of Purchase for the New York City Board of Higher Education. He is charged with the responsibility and duty of letting and awarding contracts for the furnishing of all printing and stationery as may be needed for the collegiate portion of the New York City school system.

11. Defendant Abraham Rabinowitz is Comptroller of the New York City Board of Higher Education. He is responsible for ordering payments from funds held by or allocated to the Board of Higher Education, including payments for all printing and stationery as may be needed for the collegiate portion of the New York City school system.

12. Defendant Isiah E. Robinson, Jr. is President of the Board of Education for New York City. He, and all of the individually named Board members, have the power and authority to exercise general supervisory control of the functions and activities of all administrative departments of said Board of Education, including the Department of Purchase. In exercising their duties they expend city, state, and federal funds for the operation of schools under the jurisdiction of the Board, including the expenditure of said funds for the purchase of printing.

13. Defendant Sol Berger is Director of Purchasing for the New York City Board of Education. He is charged with the responsibility and duty of letting and awarding contracts for the furnishing of all printing and stationery as may be needed for schools under the Board's jurisdiction.

14. Defendant John Holloman is President of the New York City Health and Hospital Corporation. He, and all of the individually named Board members, have the power and the authority to exercise general supervisory control of the functions and activities of all of the administrative departments of the New York City Health and Hospital Corporation, including the Department of Procurement. In exercising their duties they expend city, state, and federal funds for the operation and maintenance of health facilities and hospitals under the jurisdiction of the Corporation, including the expenditure of such funds for the purchase of printing.

15. Defendant Leonard Katz is Director of Procurement for the New York City Health and Hospital Corporation. He is charged with the responsibility and duty of letting and awarding contracts for the furnishing of

all printing and stationery as may be required by the New York City Health and Hospital Corporation.

16. Defendant Robert J. Bradbury is Comptroller, New York City Health and Hospital Corporation. He is responsible for ordering payments from funds held by or allocated to the New York City Health and Hospital Corporation, including payments for all printing and stationery as may be required by the Corporation.

17. Each defendant is sued individually and in his official capacity. Relief is sought against each and all defendants as well as their agents, assistants, successors, employees, attorneys and all persons acting in concert or cooperation with them or at their direction.

## Factual Allegations

18. The monetary value of printing contracts awarded under the direction of each of the defendants annually is in excess of $100,000.

19. Defendants Abraham D. Beame, Robert Cohen, and Harrison Goldin discharge all purchasing functions for the City of New York regarding the letting and awarding of printing contracts pursuant to a "Supplement to Standard Instructions to Bidders for Use in Printing Only" (23-L-46), paragraph 5 of which states:

> "Union Label.—Unless otherwise specified in the schedule, all work must be done in a union printing plant located within the city of New York. The union label must appear on all printing except letterheads, noteheads and any other printing excepted in the schedule."

Pursuant to the foregoing provision, said defendants have followed the general custom, practice and policy of awarding printing contracts only to those printing establishments whose employees are represented by a labor organization and who are able to exhibit the union label.

20. Defendants Alfred A. Giardino, Chairman of the Board, and all of the individually-named Board members, Francis McGivney and Abraham Rabinowitz, discharge all purchasing functions for the Board of Higher Education regarding the letting and awarding of printing contracts pursuant to a resolution of June 18, 1963, requiring that "in all printing contracts, the specifications therein shall provide as follows:

> "Union Shops and Union Label.—Unless otherwise specified in the schedule, all work must be done in a union printing plant. The union label must appear on all printing except letterheads, noteheads, and any other printing excepted in the schedule."

Pursuant to the foregoing resolution, said defendants, have followed the general custom, practice and policy of awarding printing contracts only to those printing establishments whose employees are represented by a labor organization and who are able to exhibit the union label.

21. Defendants John Holloman, as President of the New York City Health and Hospital Corporation, and all of the individually-named Board members, Leonard Katz and Robert Bradbury, discharge all purchasing functions for the New York City Health and Hospital Corporation regarding the letting and awarding of printing contracts pursuant to a policy requiring that "Letter press, or offset printing and all accessory operations must be done in a Union Printing Plant located within the City of New York.

The Union Label must appear on all printed forms required hereunder." Pursuant to the foregoing requirement, said defendants have followed the general custom, practice and policy of awarding printing contracts only to those printing establishments whose employees are represented by a labor organization and who are able to exhibit the union label.

22. Defendants Isiah E. Robinson, Jr., President of the New York City Board of Education, and all of the individually-named Board members, and Sol Berger, discharge all purchasing functions for said Board of Education regarding the letting and awarding of printing contracts pursuant to the general policy, practice and custom of awarding said contracts only to those establishments whose employees are represented by a labor organization and who are able to exhibit the union label.

23. Defendants, through the above-described customs, practices and policies of awarding printing contracts only to those establishments whose employees are represented by a labor organization and who are able to exhibit the union label, have arbitrarily and capriciously excluded plaintiffs from bidding upon and being awarded printing contracts by tax-supported public bodies for the reason that their employees are not represented by a labor organization. Said customs, practices and policies are contrary to public policy and unless defendants are enjoined from such practices, they will continue to maintain and operate said unlawful restrictions and limitations upon fair and competitive bidding.

24. Defendants, through the above-described customs, practices and policies of awarding printing contracts only to those establishments whose employees are represented by a labor organization and who are able to exhibit the

union label, have arbitrarily and capriciously excluded plaintiffs from bidding upon and being awarded printing contracts by tax-supported public bodies for the reason that their employees are not represented by a labor organization, and thus have deprived the plaintiffs of equal employment and contract opportunities in violation of the rights secured to them by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

25. The above described actions, practices and conduct of said defendants have caused, and unless permanently enjoined, will further result in irreparable injury to the plaintiffs.

26. There is no complete, adequate or speedy remedy of law to compensate plaintiffs for the injury which they are presently sustaining as a result of the practices, customs and actions of the defendants or for the injuries they will sustain as a result of the restricted bidding limitations as followed by defendants.

WHEREFORE, the plaintiffs pray:

(1) That the actions, practices and customs of the defendants restricting fair and competitive bidding by denying the rights of printing establishments whose employees are not represented by labor organizations, be declared unconstitutional, null and void.

(2) That the defendants, and all persons acting as their agents, officers, employees, servants or attorneys or under their direction or authority, be permanently enjoined and restrained from restricting bidding upon public printing contracts to establishments whose employees are represented by labor organizations.

(3) For such other and further relief as to the court may seem just and proper and for plaintiffs' costs in this matter expended.

HUGH P. HUSBAND, Jr.
Hugh P. Husband, Jr.
Attorney for Plaintiffs

Of Counsel:

COUNIHAN, CASEY & LOOMIS

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## Order of Consolidation, dated April 30, 1976.

ENDORSEMENT
74 Civ. 3155 (LFM)

Plaintiff moves for an order, pursuant to rule 42(a), Fed.R.Civ.P., consolidating this action with another suit presently pending in this district, entitled *The House of Lithography, Inc.* v. *Beame,* 75 Civ. 6443 (TPG), The motion is granted.

It is clear from the pleadings that these actions involve common questions of law and fact. Plaintiffs in both suits are corporations, located in New York City, engaged in the printing business, and whose employees are not union members. It is alleged that defendants carry on a policy and practice of restricting the bidding for and awarding of city, state, and federally financed printing contracts only to establishments whose employees are union members, and who can exhibit the union label. Plaintiffs seek a declaratory judgment, pursuant to 28 U.S.C. § 2201, declaring defendants' activity unconstitutional as a deprivation of rights under the due process and equal protection clauses of the Fourteenth Amendment. Jurisdiction in both suits is invoked under 28 U.S.C. § 1343(3).

*Order of Consolidation, dated April 30, 1976.*

These cases should be consolidated for all purposes to avoid undue duplication of time, effort, and expense for the parties involved and for the court. No prejudice would result to the parties in the *Image Carrier* case, since that suit is still in its preliminary stages.

Defendant-Intervenor in *Image Carrier,* Allied Printing Trade Council of Greater New York, objects to consolidation as an attempt to aggregate claims to reach a $10,000 jurisdictional amount. However, as we have noted, jurisdiction in each case is invoked under 28 U.S.C. § 1343(3), which has no jurisdictional amount requirement.

Accordingly, the within motion is granted and *The House of Lithography, Inc.* v. *Beame,* 75 Civ. 6443 (TPG), is hereby consolidated for all purposes with *Image Carrier Corp.* v. *Beame,* 74 Civ. 3155 (LFM).

So ordered.

LLOYD F. MACMAHON
LLOYD F. MACMAHON
United States District Judge

Dated: New York, New York
April 30, 1976

(Filed in the U.S. District Court for the S.D. of N.Y. on May 3, 1976.)

## Answer of City of New York.

Defendants, by their attorney, W. Bernard Richland, Corporation Counsel, answer the complaint herein as follows:

1. Deny so much of paragraph "1" of the complaint which alleges that jurisdiction of this Court is invoked pursuant to the provisions of Title 28 U.S.C. § 1343(3) and that the policy and practices of the municipal defendants are unconstitutional.

2. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "2", "3", "4", and "5".

3. Deny the allegations contained in paragraph "9" that Alfred A. Giardino is Chairman of the Board of Higher Education and that the Board expends federal funds for the making and purchase of printing.

4. Deny the allegations contained in paragraphs "10" and "11".

5. Deny the allegations contained in paragraph "13" of the complaint except admit that Sol Berger is the Director of Purchasing for the Board of Education.

6. Admit the allegations contained in paragraph "15" of the complaint except deny that Leonard Katz is charged with the responsibility and duty of letting and awarding contracts for furnishing of all printing and stationery as may be required by the New York City Health and Hospital Corporation.

7. Admit the allegations contained in paragraph "16" of the complaint except deny that Robert Bradbury is responsible for ordering payments of less than $250.

8. Deny the allegations contained in paragraph "18" of the complaint.

9. Admit the allegations contained in paragraph "20" of the complaint except deny that the Chairman of the Board, individual members of the Board, Francis McGivney, and/or Abraham Rabinowitz discharge all purchasing functions for the Board of Higher Education.

10. Admit the allegations contained in paragraph "21" of the complaint except deny that John Holloman, the individual members of the Board, Leonard Katz, and/or Robert Bradbury discharge all purchasing functions for the New York City Health and Hospital Corporation.

11. Admit the allegations contained in paragraph "22" of the complaint except deny that the members of the Board of Education or Sol Berger discharge all purchasing functions for the Board of Education.

12. Deny the allegations contained in paragraphs "23", "24", "25", and "26" of the complaint.

AS AND FOR A FIRST COMPLETE DEFENSE, DEFENDANTS RESPECTFULLY ALLEGE:

13. The complaint fails to state a claim upon which relief can be granted.

W. BERNARD RICHLAND
Corporation Counsel

By: H. Kenneth Wolfe
H. KENNETH WOLFE
Attorney for Defendants
Municipal Building
New York, New York 10007
(212) 566-2191/2192

## Affidavit of Robert I. Cohen in Support of Defendants' Request for Stay.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ROBERT I. COHEN, being duly sworn, deposes and says:

1. I am the Commissioner of Purchase of the City of New York and make this affidavit in support of defendant's request for a stay of this Court's order pending the disposition of the appeal of the order to the Second Circuit Court of Appeals.

2. The requirement of a union label for City printing contracts was established in 1934 by then Mayor LaGuardia, and I believe that it is important that this policy be continued for a few months until the Second Circuit Court of Appeals decides this matter.

3. The Department of Purchase has received and opened bids for two printing contracts required for the May 3, 1977 school board elections. These contracts have not yet been awarded because they first must be approved by the Emergency Financial Control Board. If our application for a stay is denied, there will not be sufficient time to advertise and award the printing contracts so that the election can be held as scheduled.

4. There is presently a three year contract for daily printing and distribution of the City Record. A provision of this contract allows the City of New York to terminate this agreement at six month intervals if the City provides the contractor with thirty days' notice of the cancellation. The City has already received a bid which would result in a savings of approximately $250,000 per annum. If our application for a stay is denied, there would not be sufficient time to advertise and award the agreement. Accord-

ingly, the City would have to wait six additional months to terminate the City Record contract which may negate savings of approximately $125,000.

WHEREFORE, your deponent respectfully requests that defendants' proposed order, which includes a stay of the order pending the disposition of the appeal, be signed.

(Sworn to by Robert I. Cohen, Commissioner of Purchase, April 19, 1977.)

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## Opinion of MacMahon, J.

APPEARANCES:

COUNIHAN, CASEY & LOOMIS
By: JAMES E. ANDERSON and
FRANCIS T. COLEMAN, Esqs.

—and—

TOWNLEY, UPDIKE, CARTER & RODGERS
By: JEROME COLEMAN, Esq.
Attorneys for Plaintiffs

W. BERNARD RICHLAND, Esq.
Corporation Counsel
By: H. KENNETH WOLFE, Esq.
Asst. Corporation Counsel
Attorney for Defendants

MENAGH, TRAINOR & ROTHFELD
By: NORMAN ROTHFELD, Esq.
Attorneys for Intervenor Defendant
Allied Printing Trades Council of Greater New York

MacMahon, *District Judge.*

Plaintiffs, non-union printers, allege that defendants' practice of restricting bidding upon, and of awarding printing contracts to, only those printing establishments whose employees are represented by labor organizations and who can therefore exhibit the union label deprives them of an opportunity to bid on these contracts, in violation of their rights under the due process and equal protection clauses of the Fourteenth Amendment, and is contrary to New York state law, the New York City Charter, and public policy. They seek a declaratory judgment and an injunction prohibiting that practice.

A non-jury trial was held before us on December 6, 1976 to determine these issues, and the following constitutes our findings of fact and conclusions of law.

Plaintiffs challenge the union label requirement on both federal constitutional and state law grounds, and since decision upon state grounds might avoid needless constitutional adjudication, we must consider, in light of the doctrine announced in *Railroad Comm'n of Texas* v. *Pullman Co.*,[1] whether abstention is appropriate.

Abstention is an equitable doctrine and has its origins in principles of federalism and comity.[2] It serves to avoid needless friction with, and demonstrates proper respect for, state law and state courts. It is not a rule of necessity,[3] and the decision to abstain is vested in the sound discretion of the district court.[4] The doctrine is applicable only in special circumstances[5] and only when the issue of state law is uncertain,[6] as it is here. We do not think, however, that abstension is warranted here because neither party has even raised, much less requested abstention, and the case, after considerable delay, has already been tried.[7] Furthermore, there is no vital state or city interest, nor elaborate regulatory program involved, and consequently

the interference with the city's administration of its own affairs resulting from a determination that the union label requirement is invalid would be minimal.[8] Finally, the constitutional question, whether the union label policy violates the Fourteenth Amendment, is of very narrow compass.[9]

Under these circumstances, we think that the injustice of subjecting plaintiffs to added expense and delay outweighs the advantages which may accrue from adherence to the traditional policy of avoiding constitutional adjudication by abstention.[10]

The question of whether the union label requirement violates state law or the New York City Charter is sufficiently unsettled,[11] especially as compared to federal constitutional precedent in this area,[12] to make a decision as to its validity on that basis inappropriate. We, therefore, proceed to consider the validity of the union label requirement under the due process and equal protection clauses.

There is no dispute that the Department of Purchase,[13] which awards all the printing contracts for New York City, the Board of Education[14] and the New York City Health and Hospital Corporation,[15] have adopted a policy requiring that all public printing work must be done in a union plant located in New York City and bear the union label, save for letterheads, noteheads or unless otherwise excepted. Defendants claim that this policy is justified because it rationally furthers legitimate municipal interests, even though it deprives plaintiffs of an equal opportunity to bid upon and to be awarded printing contracts.

We must determine, at the outset, whether the due process and equal protection guarantees of the Fourteenth Amendment are applicable to the award of public printing contracts in light of *Atkin* v. *Kansas*[16] and its progeny. The Supreme Court, in *Atkin,* upheld a Kansas statute which regulated the pay and limited the hours of employees

of the state, its subdivisions and public contractors. The Court stated that, since the work was of a public character, "it is for the State to prescribe the conditions under which it will permit work of that kind to be done. Its action touching such a matter is final so long as it does not, by its regulations, infringe the personal rights of others. . . ."[17]

Relying in part on *Atkin,* the court held, in *American Yearbook Co.* v. *Askew,*[18] that a Florida statute requiring all public printing to be done in the state was not violative of the equal protection clause because the award of such contracts was a proprietary, or a business, rather than a governmental function, and that, when a municipality or state acted in such capacity, it was exempt from the limitations of the equal protection clause.[19]

Since plaintiffs do not challenge the requirement here that public printing be done in a plant located in New York City, the specific holding in *American Yearbook* is inapplicable. Furthermore, that holding could be sustained on the principle that the equal protection clause is confined to persons within the jurisdiction of the state which enacted the challenged statute.[20] In any event, the Supreme Court has ruled that the due process[21] and equal protection[22] guarantees are applicable to public employment. While the coverage afforded by these two guarantees often overlaps, the appropriate analysis under each is different.[23]

The Supreme Court has rejected the right-privilege distinction employed in due process analysis by *Atkin,* as well as a number of earlier cases.[24] Therefore, it no longer suffices to say that, although a government may not deprive someone of a right arbitrarily, it may do so in the case of a privilege.[25] However, the plaintiff must still demonstrate the deprivation of some liberty or property interest protected by the Fourteenth Amendment in order to invoke the due process guarantee.[26]

Plaintiffs here have not addressed themselves to the issue of whether their opportunity to bid on public contracts is one of liberty or property within the meaning of the due process clause, but we need not decide this issue since we have determined that the union label requirement violates the equal protection clause.

The equal protection clause is a more explicit safeguard than the due process clause,[27] and its coverage is not confined to deprivations of liberty or property. Although the Supreme Court held that the equal protection clause was not violated in *Atkin,* it clearly indicated that the clause is applicable to public employment regulations[28] and, as recently as *Massachusetts Board of Retirement* v. *Murgia,*[29] has subjected such regulations to equal protection scrutiny even though they were promulgated by the state in its proprietary capacity as an employer.

We see no justification in the case law, the language of the Amendment, or in reason for restricting the reach of the equal protection clause. Indeed, such a course would be fraught with danger to the very principles underpinning the Amendment. We, therefore, turn to the question of whether the union/non-union classification here violates the equal protection clause.

Traditional equal protection analysis is a two-tiered system. Strict scrutiny of a classification is required only if the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvange of a suspect class.[30] If not, then the classification is examined under the relatively relaxed rational basis standard, which requires only that the classification rationally furthers a legitimate purpose identified by the state,[31] and, under that standard, the classification is presumed valid.[32] Since we find that the union label requirement does not satisfy the rational basis standard,[33] it is unnecessary to determine whether a strict scrutiny test should be applied.

Defendants contend that the union label requirement rationally furthers the city's interest in obtaining good quality work. The relevant equal protection inquiry, therefore, is directed to the quality of union, as opposed to non-union, printing.

Plaintiffs' expert testified that the quality of work does not depend on the union or non-union status of the printing establishment and that, in general, the work required by the city did not require a high level of skill. Moreover, three non-union printers testified that they could perform the work required by the city with the requisite degree of skill and competence. The roster of their representative clients confirmed the good quality of their work.

We find, therefore, in light of all the evidence, that there is no rational relationship between the union label requirement and the interest of the city in obtaining good quality work.

Defendants also contend that the union label requirement enables them to police effectively the city's policy that employees receive prevailing rates of wages. We think that justification is attenuated to the point of irrelevancy, but, in any event, it fails on other grounds.

The union label requirement was established by executive order in 1934 "to lend the greatest measure of aid and assistance during the present economic depression" to printing employees.[34] That order also contained provisions establishing the policy that prevailing wages should be paid to printing employees and providing that if any question were raised as to the wage rates of the lowest bidder, the N.R.A. Compliance Board would be requested to submit a report on the bidder's compliance "with the code requirements." We doubt that the union label requirement could rationally have been intended to ensure that the prevailing wage rate is paid to printers' employees because that requirement was unnecessary in light of these other provisions.[35]

Even assuming that the purpose was to ensure that the prevailing wage rate is paid, the evidence here refutes defendants' contention that the challenged classification rationally furthers that purpose. We will assume, *arguendo,* that Section 220 of the New York State Labor Law sets the prevailing wage rate, as defendants contend.[36] That statute defines "the prevailing rate of wages" as that rate paid to the majority of workmen, laborers or mechanics in the same trade. It does not mention labor unions.

The only testimony before us concerning the employment status of the "majority of workmen. laborers or mechanics" in the printing trade is that there are 350 non-union, as compared to 250 union, shops in a trade association known as Printing Industries of Metropolitan New York. This evidence indicates that the prevailing wage rate, as defined by the statute on which defendants rely, follows the non-union rate more closely than the union rate and, therefore, undermines defendants' contention that the union label requirement safeguards payment of the prevailing wage rate.

Moreover, plaintiffs' expert testified that there is no correlation between the union or non-union status of a printing company and the wage rates it pays to its employees; some non-union rates are as high or higher than some union rates. He further testified that union rates vary considerably.

Union rates, therefore, do not necessarily meet the prevailing wage rate. More fundamentally, there is no evidence here of any natural,[37] logical[38] or necessary correlation between the union wage rate and the prevailing wage rate. Nor is there any evidence showing any reason why non-union rates might not approximate the prevailing wage rate as closely as union rates. The presumption of validity must yield to the evidence which showed that there was no logical or even statistical correlation between the prevail-

ing wage rate and the union or non-union status of the printing company. We, therefore, conclude that the challenged classification does not rationally further the city's interest in safeguarding the payment of prevailing wages.

The other arguments advanced by defendants in support of the union label requirement are equally unpersuasive. Their contention that the requirement facilitates policing of printers' claims for overtime wages because union rates are more easily ascertainable is refuted by the undisputed testimony of plaintiffs' expert that all overtime rates must be specified in every contract.

Defendants further argue that the city is benefited by the union label requirement because it results in better quality work due to the fact that the union operates schools which keep abreast of the latest technology. The relevant inquiry, however, is not whether the union conducts training programs but the comparative effectiveness of union versus non-union programs. Here, again, the only evidence before us is the undisputed testimony of plaintiffs' expert witness that the on-the-job training programs of non-union shops are at least as, and perhaps more, effective than training programs typically conducted outside the shop by the unions. Moreover, we have previously found that there is no correlation between the quality of work and the union or non-union status of the printing shop. Finally, the evidence refutes defendants' contention that the union label policy obviates the need for inspections of printing shops, and we reject it.

Accordingly, we find that defendants' policy and practice of restricting bidding upon, and of awarding printing contracts to, only those printing establishments whose employees are represented by labor organizations and who can, therefore, exhibit the union label violates the equal protection clause of the United States Constitution.[39]

The foregoing constitutes our findings of fact and conclusions of law in accordance with Rule 52(a), Fed.R.Civ.P.

Settle an order within ten (10) days not inconsistent with this opinion.

Dated: New York, N. Y.
April 7, 1977

LLOYD F. MACMAHON
LLOYD F. MACMAHON
United States District Judge

FOOTNOTES

[1] 312 U.S. 496, 500-01 (1941).

[2] See *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324, 328 (1964); *Railroad Comm'n of Texas* v. *Pullman Co., supra,* 312 U.S. at 500-01.

[3] See C. Wright, Law of Federal Courts § 19, p. 63 (2d ed. 1970).

[4] See *Harman* v. *Forssenius,* 380 U.S. 528, 534 (1965).

[5] See *Zwickler* v. *Koota,* 389 U.S. 241, 248 (1967).

[6] See *Harman* v. *Forssenius, supra,* 380 U.S. at 534.

[7] *Hostetter* v. *Idlewild Bon Voyage Liquor Corp., supra,* 377 U.S. at 329; see *Harris County Comm'rs Court* v. *Moore,* 420 U.S. 77, 84 (1975); *California* v. *LaRue,* 409 U.S. 109, 124 n.2 (1972); cf. *Provident Trademens Bank & Trust Co.* v. *Patterson,* 390 U.S. 102, 126 (1968).

[8] *Hostetter* v. *Idlewild Bon Voyage Liquor Corp., supra,* 377 U.S. at 329; see *Harman* v. *Forssenius, supra,* 380 U.S. at 534.

[9] Compare *Idlewild Bon-Voyage Liquor Corp.* v. *Epstein,* 212 F. Supp. 376, 382 (S.D.N.Y. 1962) (three-judge court), *aff'd sub nom. Hostetter* v. *Idlewild Bon Voyage Liquor Corp., supra,* 377 U.S. 324, with *Railroad Comm'n of Texas* v. *Pullman Co., supra,* 312 U.S. 496, and *Public Utilities Comm'n* v. *United Fuel Gas Co.,* 317 U.S. 456, 463 (1943).

[10] *Idlewild Bon-Voyage Liquor Corp.* v. *Epstein, supra,* 212 F. Supp. at 380; see *Allegheny County* v. *Frank Mashuda Co.,* 360 U.S. 185, 196-97 (1959); *Chicago* v. *Atchison, T. & S. F. Ry.,* 357 U.S. 77, 84 (1958).

[11] Union label requirements have been the subject of previous litigation in New York courts. An early case, *Davenport* v. *Walker,* enjoined the awarding of a contract on the basis of such a requirement, holding that the union label requirement was unconstitutional and clearly against public policy. *Davenport* v. *Walker,* 57 A.D. 221, 68 N.Y.S. 161, 164 (1901). See also *People ex rel. John Single Paper Co.* v. *Edgcomb,* 112 A.D. 604, 98 N.Y.S. 965, 966 (1906).

However, two subsequent cases approved the requirement at issue in this case. *Burland Printing Co.* v. *LaGuardia,* 9 N.Y.S.2d 616, 618 (Sup. Ct. 1938); *Amalithone Realty Co.* v. *City of New York,* 162 Misc. 715, 295 N.Y.S. 423, 425, *aff'd,* 297 N.Y.S. 262

(1937). Recent New York decisions have cast doubt upon the present validity of the union label requirement and the continued vitality of the *Amalithone* and *Burland* cases. See *Apex Indus. Const. Corp.* v. *Village of Lake George,* 31 A.D.2d 670, 295 N.Y.S. 2d 548, 549 (1968); *Long Island Signal Corp.* v. *County of Nassau,* 51 Misc.2d 320, 273 N.Y.S.2d 188, 194 (1966).

[12] See *Master Printers Ass'n* v. *Board of Trustees of Junior College Dist. 508,* 356 F. Supp. 1355, 1357 (N.D. Ill. 1973); see also *Anthony P. Miller, Inc.* v. *Wilmington Housing Authority,* 165 F. Supp. 275, 279-80 (D. Del. 1958); Abstention in Constitutional Cases, 122 U. Pa. L. Rev. 1071, 1100 (1974).

[13] See plaintiffs' Exhibit 1, Supplement to Standard Instructions to Bidders for Use in Printing Only, Form 23-L-46. Policy established in 1934.

[14] See plaintiffs' Exhibit 3, Standard Form of Contract Proposal, Form C.E. 8 (Part 1). Policy established in 1939.

[15] See plaintiffs' Exhibit 5, Memo dated December 3, 1971, from Mr. Brady, Assistant Sr. Vice-President, Finance, and Mr. Katz, Director, Procurement. Policy established 1971.

[16] 191 U.S. 207 (1903).

[17] *Id.* at 224.

[18] 339 F. Supp. 719 (M.D. Fla. 1972) (three-judge court), *aff'd without opinion,* 409 U.S. 904 (1972).

[19] *Id.* at 721-23.

[20] *Township of River Vale* v. *Town of Orangetown,* 403 F.2d 684, 687 (2d Cir. 1968).

[21] See *Perry* v. *Sindermann,* 408 U.S. 593, 599-603 (1972); *Board of Regents* v. *Roth,* 408 U.S. 564, 571-78 (1972); See also *Thompson* v. *Gallagher,* 489 F.2d 443, 446-47 (5th Cir. 1973).

[22] See *Massachusetts Board of Retirement* v. *Murgia,* 44 U.S. L.W. 5077 (U.S. June 26, 1976); cf. *Wieman* v. *Updegraff,* 344 U.S. 183, 192 (1952). See also *Kotch* v. *Board of River Port Pilot Comm'rs,* 330 U.S. 552, 556 (1947); *Thompson* v. *Gallagher, supra,* 489 F.2d at 446-47; *Burt* v. *City of New York,* 156 F.2d 791, 792 (2d Cir. 1946); *Mando* v. *Beame,* 398 F. Supp. 569, 572 (S.D.N.Y. 1975).

[23] See *Bolling* v. *Sharpe,* 347 U.S. 497, 499 (1954); 87 Harv. L. Rev. 1842, 1844-45 (1974).

[24] See *Graham* v. *Richardson,* 403 U.S. 365, 374 (1971); *Goldberg* v. *Kelly,* 397 U.S. 254, 262 (1970).

[25] See *Thompson* v. *Gallagher, supra,* 489 F.2d at 446.

[26] See *Board of Regents* v. *Roth, supra,* 408 U.S. at 571-72.

[27] See *Bolling* v. *Sharpe, supra,* 374 U.S. at 499.

[28] See *Atkin* v. *Kansas, supra,* 191 U.S. at 224.

[29] 44 U.S.L.W. 5077 (U.S. May 26, 1976); see *Thompson* v. *Gallagher, supra,* 489 F.2d at 446-47; *Mando* v. *Beame, supra,* 398 F. Supp. at 572.

[30] See *Id.* at 5079; *San Antonio Independent School District* v. *Rodriguez,* 411 U.S. 1, 16 (1973).

[31] See *Massachusetts Board of Retirement* v. *Murgia, supra,* 44 U.S.L.W. at 5079; *San Antonio Independent School District* v. *Rodriguez, supra,* 411 U.S. at 40-41; *Dandridge* v. *Williams,* 397 U.S. 471, 485 (1970).

[32] See *Massachusetts Board of Retirement* v. *Murgia, supra,* 44 U.S.L.W. at 5079; *San Antonio Independent School District* v. *Rodriguez, supra,* 411 U.S. at 40-41.

[33] See *Massachusetts Board of Retirement* v. *Murgia, supra,* 44 U.S.L.W. at 5078.

[34] See plaintiffs' Exhibit 2, Extract from Minutes of Meeting of Board of City Record, held April 12, 1934.

[35] See *United States Dep't of Agriculture* v. *Moreno,* 413 U.S. 528, 536-37 (1973); *Eisenstadt* v. *Baird,* 405 U.S. 438, 452 (1972). See also Fair Labor Standards Act, 29 U.S.C. § 206; N.Y. Labor Law §§ 220, 652; Administrative Code of City of New York § 343-9.0 (a)(1)(f).

[36] But see 3 Op. State Compt. 293 (1947); 1943 Op. Atty. Gen. 110, 111. There is nothing in the order establishing the prevailing wage rate policy to determine how that rate is to be determined other than the oblique and tangential reference to "code requirements," presumably a "code of fair competition" promulgated pursuant to the National Industrial Recovery Act, which was declared unconstitutional in 1935. See *A.L.A. Schechter Poultry Corp.* v. *United States,* 295 U.S. 495 (1935).

[37] See *Massachusetts Board of Retirement* v. *Murgia, supra,* 44 U.S.L.W. 5077, where the Supreme Court concluded that mandatory retirement at age 50 for uniformed policemen rationally

furthered the state's purpose of protecting the public by assuring the physical preparedness of its uniformed police because fitness for uniformed work generally and naturally diminishes with age.

[38] See *Hughes* v. *Alexandria Scrap Corp.*, 96 S.Ct. 2488 (1976), where the Supreme Court upheld a Maryland statute whose purpose was to rid Maryland of auto hulks, requiring more extensive documentation from out-of-state than in-state unlicensed hulk suppliers. The Court found the Legislature could reasonably assume that a hulk destroyed by an out-of-state processor was more likely to have been abandoned outside the state and that the documentation requirement, by making it easier for an in-state than an out-of-state processor to receive bounties, tended to ensure that the state's limited resources were targeted to hulks abandoned inside Maryland.

[39] See *Master Printers Ass'n* v. *Board of Trustees of Junior College Dist. 508, supra,* 356 F. Supp. at 1357; *accord, State ex rel. United Dist. Heating, Inc.* v. *State Office Bldg. Comm'n,* 124 Ohio St. 413, 179 N.E. 138, 139 (1931), 125 Ohio St. 310, 181 N.E. 129 (1932); *Marshall & Bruce Co.* v. *Nashville,* 109 Tenn. 495, 71 S.W. 816-19 (1903). See also Annot., 110 A.L.R. 1406.

## Order of MacMahon, J.

ORDER

This case having come on hearing upon Plaintiffs' Complaint for Declaratory Judgment and Injunctive Relief, and the Court having rendered its opinion on April 7, 1977, declaring that the practice of restricting bidding upon, and the awarding of printing contracts to, only those printing establishments whose employees are represented by labor organizations and who can, therefore, exhibit the union label, was violative of the equal protection clause of the Fourteenth Amendment of the United States Constitution, therefore, it is

ORDERED, ADJUDGED and DECREED that:

(1) The Defendants' policy and practice of restricting bidding upon, and of awarding printing contracts to, only those printing establishments whose employees are represented by labor organizations and who can, therefore, exhibit the union label, is violative of the Equal Protection Clause of the United States Constitution;

(2) The Defendants are hereby enjoined from implementing and enforcing the aforesaid policy and practice of restricting bidding upon and awarding printing contracts to only those printing establishments whose employees are represented by labor organizations and who can, therefore, exhibit the union label.

(3) The order herein is stayed pending the disposition of the appeal of this Order to the Second Circuit Court of Appeals, on condition taken that the appeal be taken and prosecuted within the minimum time provided by the rules of that court without any extensions or adjournments.

Dated: April 20, 1977

LLOYD F. MACMAHON
U.S.D.J.

## Notice of Appeal of New York City Defendants.

SIRS:

Notice is hereby given that the defendants hereby appeal to the United States Court of Appeals for the Second Circuit, from the order entered herein on April 20, 1977 which ordered, adjudged, and decreed that the defendants' policy and practice of restricting bidding upon, and of awarding printing contracts to, only those printing establishments whose employees are represented by labor organizations and who can, therefore, exhibit the union label, is violative of the Equal Protection Clause of the United States Constitution, and that the defendants are enjoined from implementing and enforcing the aforesaid policy and practice, and this appeal is taken from each and every part of said order as well as from the whole thereof.

Dated: New York, New York
April 22, 1977

Yours, etc.,

W. BERNARD RICHLAND
Corporation Counsel of
The City of New York
Attorney for Defendants

By Stuart Adler
STUART ADLER

To:

TOWNLEY & UPDIKE, Esqs.
Attorneys for Plaintiffs

MENAGH, TRAINOR & ROTHFELD, Esqs.
Attorneys for Intervenor, Allied Printing Trades

## Notice of Appeal of Intervenor Allied Printing Trades Council.

SIRS:

Notice is hereby given that the Allied Printing Trades Council of Greater New York, defendant above, hereby appeals to the United States Court of Appeals for the Second Circuit, from the order entered herein on April 20, 1977 which ordered, adjudged, and decreed that the defendants' policy and practice of restricting bidding upon, and of awarding printing contracts to, only those printing establishments whose employees are represented by labor organizations and who can, therefore, exhibit the union label, is violative of the Equal Protection Clause of the United States Constitution, and that the defendants are enjoined from implementing and enforcing the aforesaid policy and practice, and this appeal is taken from each and every part of said order as well as from the whole thereof.

Dated: New York, New York
May 2, 1977

Yours, etc.,

MENAGH, TRAINOR & ROTHFELD

By: NORMAN ROTHFELD
Attorneys for Defendant-Intervenor
Allied Printing Trades Council of
Greater New York

To: TOWNLEY & UPDIKE, Esqs.
Attorneys for Plaintiffs

W. BERNARD RICHLAND, Esq.
Corporation Counsel of The City of New York
Attorney for Defendants

## Transcript of Proceeding Below.

Before: Hon. Lloyd F. MacMahon, District Judge.

December 6, 1976
12:00 Noon

Appearances:

Counihan, Casey & Loomis, Esqs.,
Attorneys for Plaintiffs
James Anderson, Esq.,
—and—
Townley, Updike, Carter & Rodgers, Esqs.,
Jerome Coleman, Esq. of Counsel.

W. Bernard Richland, Esq.,
Attorneys for Defendants
H. Kenneth Wolfe, Esq., of Counsel.

Donald F. Menagh, Esq.,
Attorney for Intervening Defendants
Norman Rothfeld, Esq., of Counsel.

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(Case called.)

Mr. Anderson: Plaintiff ready.

Mr. Wolfe: Ready.

Mr. Coleman: My name is Jerome Coleman of Townley, Updike, Carter & Rodgers. I am admitted in this Court. I take great pleasure in introducing to you Mr. Anderson, who is admitted in the bars of the court of D. C. and Maryland and federal courts, and I respectfully move his admission pro hac vice.

The Court: On one condition, that he quit calling my chambers.

I practiced law for 25 years and I never once called the judge's chambers. I had more calls in my chambers

in this case than you can imagine, and there are express directions in the Law Journal under my calendar not to call my chambers.

The other day in the course of 20 minutes I had 32 telephone calls. How the lawyers expect a judge to do any work, I don't know.

All right, proceed.

Mr. Anderson: Your Honor, before we begin, before I make my opening statement, I should advise the Court that one of the plaintiffs in this case, Devon Lithographers, Incorporated, advised the counsel for the plaintiff on Saturday afternoon that due to the proceedings that they have pending in the Second District in regard to the unionization of that company, they desire to withdraw from this lawsuit.

Their status is they had an election, I believe some time last spring. The union won the election. The case then went into the National Labor Relations Board—

The Court: Counsel, I don't care about all that. What is your problem?

Mr. Anderson: I wanted to advise the Court that Devon Lithographers will not be a plaintiff any further.

The Court: Have they withdrawn?

Mr. Anderson: They advised us Saturday that they wanted to withdraw and I wanted to advise the Court.

The Court: All right. We will discontinue that action. Do you agree they can withdraw?

Mr. Rothfeld: Yes, your Honor.

The Court: Stipulate to discontinuance and the clerk will give you that.

Mr. Anderson: Briefly, to begin to tell the Court what this case is about—

The Court: I know what it is about. I have considered it and written an extensive opinion involving about 22 motions on the thing, so I know what it is about.

Put the evidence in.

Mr. Anderson: If the Court has no question—

The Court: I have no question.

Mr. Anderson: The plaintiff would then call Mr. Joel Weiss.

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JOEL M. WEISS, called as a witness by the plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. Anderson:

Q. Could you tell the Court, please, what is your occupation? A. President of a lettershop company in New York City.

Q. What is that company? A. Associated Litho and Letter Servicing.

Q. Where is that company located? A. 545 West 45th Street.

The Court: I want daily copy in this case, incidentally. Will you make arrangements with the Court Reporter to buy it?

Q. Mr. Weiss, could you, sir, tell us whether or not your company is a union or nonunion company? A. We are a nonunion shop.

Q. Do you have the ability to exhibit the union label? A. Not at all.

Q. Mr. Weiss, how many employees do you have in your company? A. 15.

Q. Can you describe, sir, the kind of work that you do? A. We are lettershop. We do both printing and mailing activity.

Q. What kind of equipment do you have in your shop? A. We have three small printing presses, inserting equip-

ment, cutting, folding, stapling, collating, mail processing equipment.

Q. Do you have the capability to do letterset and offset printing in your company? A. We do offset printing.

Q. Have you ever bid upon a job, a city job? A. No, I have not.

Q. And why, sir? A. Because I believe it requires a union label which I cannot provide.

Q. Could you describe basically the kind of work that you do in your shop? A. Our printing work, we do small printing such as letters, simple forms, advertising promotion brochures, reply cards, letterheads.

The Court: Is this called flat form printing?

The Witness: No, flat form is a letterset. We are offsetters.

Q. Can you do flat form printing in your shop? A. No.

Q. Mr. Weiss, can you tell us, sir, who some of your clients or customers are? A. Yes. We do work for people like Time, Incorporated, Swissair, National Health Council, some federal agencies.

Q. What federal agencies ? A. The President's Council on Physical Fitness and Sports. President's Council on Environmental Quality, to name two.

Q. In regard to the press aspect of your business, the printing aspect of your business, who many employees do you have that are involved in the printing trades? A. Four.

Q. What do they do? A. One is a pressman. Two of them are multilith operators and one of them operates cutting and folding equipment.

Q. Have you had occasion to review requests to bid by various city agencies? A. I am sorry. I don't understand your question.

Q. Could you do work for the City of New York if you had the ability to bid on those jobs? A. I think we could do so, yes.

Mr. Anderson: No further questions.

The Court: Cross-examine.

Mr. Wolfe: I have no questions, your Honor.

Cross Examination by Mr. Rothfeld:

Q. Mr. Weiss, you have testified on direct that you have four employees in the printing trades, is that correct? A. Yes.

Q. Is one of them James Adams? A. Yes.

Q. What work does he do? A. He operates cutting and folding equipment.

Q. What is Mr. Adams' regular straight time work week? A. The number of hours?

Q. Yes. A. 36 generally.

Q. A six-hour week. What is Mr. Adams' gross pay? A. I don't know. I have to look at the exhibits I handed in.

Q. I show you—

The Court: First show me how it is relevant.

Mr. Rothfeld: If your Honor please—

The Court: I have read your brief. We are not concerned here with what the wages are, what the working conditions are.

We are concerned solely with the question of whether this is a reasonable classification and that to me seems to turn on whether you are going to be able to do the kind of work as well as a union shop; not what the working conditions are.

This isn't a labor case.

Mr. Rothfeld: If your Honor please, Mayor LaGuardia—

The Court: I read your brief. I know what Mayor LaGuardia instituted.

Wlil you answer my question? Why is what you say relevant? How are wages or working condi-

tions or anything else relevant to the question before me?

Mr. Rothfeld: I believe one question before your Honor is whether the City of New York has a right to require that the persons who bid for New York City jobs pay the prevailing rate of wages.

The Court: That is not the question before me. I already ruled that this plaintiff states a claim for relief that if the sole basis of discrimination here is because one shop is union and the other not, that is illegal.

If that is the question, there is nothing to try.

I am not here to determine whether they pay wages or not. I am not going to listen to that. That is not relevant.

Mr. Rothfeld: May I make an offer of proof?

Mr. Anderson: Objection.

The Court: I will take your offer of proof.

Mr. Rothfeld: If permitted to cross-examine Mr. Weiss, the testimony would be that Mr. Weiss' four printing employees are paid hourly rates of pay that are far below the prevailing wage in the City of New York for employees who do the same work as the witness' employees perform.

Further, that the witness' employees do not have any pension plan coverage whereas the prevailing rate of pay for printing employees in the City of New York, as shown by the union scales, includes a very substantial pension for printing employees.

The Court: Perhaps you would stipulate that that will be the test.

Mr. Anderson: I have some problems with that particular stipulation.

The Court: Do you agree with me that it is totally irrelevant?

Mr. Anderson: Yes, sir.

The Court: Then why can't you stipulate? That is what he said.

Mr. Anderson: If the Court thinks it is irrelevant then I will be inclined—

The Court: Then stand on the question of law.

Mr. Anderson: All right, sir, although I would disagree with portions of his statement. If the Court will not permit examination on that point from this witness—

The Court: Can't you stipulate that and we don't have to listen to a lot of nonsense here in this trial?

Mr. Anderson: All right, sir. As long as the Court feels it is irrelevant.

Mr. Rothfeld: Counsel's statement, "All right, sir" having stated he disagrees with portions—

The Court: You stipulate that that is what he would testify to unequivocally?

Mr. Anderson: In response—

The Court: In response to me, do you or don't you?

Mr. Anderson: Yes, sir.

The Court: All right, he stipulates to that.

Q. Is it correct, Mr. Weiss, that your firm does not own printing presses which can perform flat form printing? A. That is true.

Mr. Rothfeld: That is all.

Redirect Examination by Mr. Anderson:

Q. If you were permitted to bid upon or do work for the City, can you tell the Court what kinds of work you could do for the City of New York? A. Yes. I believe we could do letterhead work, pamphlet work, booklet work, smaller jobs.

Mr. Anderson: That is all I have.
The Court: You are excused.
(Witness excused.)
Mr. Anderson: Mr. Altomare, please.

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CAESAR C. ALTOMARE, called as a witness by the plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. Anderson:

Q. Mr. Altomare, can you tell the Court what your title is? A. I am the Deputy Commissioner of the Department of Purchase.

Q. In that capacity, what are you responsibilities and duties, sir? A. In that capacity I must review every contract in the amount of $2,500 and above.

Q. Do you also have other duties in regard to the Department of Purchase of the City of New York? A. Yes. I also have some administrative duties, some managerial duties.

Q. Can you tell us, sir, what is the Department of Purchase and what do they do? A. The Department of Purchase is created in the New York City charter as part of Municipal Service Agency, an administration under which we are blanketed. It is the function of the Department of Purchase to purchase all materials, supplies and equipment.

Q. And in that group of items which you mentioned is printing one of the types of things that the Purchase Department purchases? A. Yes.

Q. Do you know if the Department of Purchase has a policy in regard to printing work that it purchases? A. Yes.

Q. Can you tell us, sir, what that is? A. Yes. The policy

is that for every contract of printing, flat forms, the work must be done in a union shop located in New York City, union printing shop located in New York City.

Q. Where is that particular—well, I will show you Plaintiff's Exhibit No. 1 which is Form 23L of the City of New York, Department of Purchase, and ask you, sir, if you can identify that. A. Yes, this is a supplement which goes with our standard form of contract which exists on every contract. For printing we also put in this supplement and under Paragraph 5 there is a paragraph "Union Label."

Q. Tell us what that says. A. "Unless otherwise specified in the schedule, all work must be done in a union printing plant located within the City of New York. The union label must appear on all printing except letterheads, note heads and anyother printing accepted in the schedule."

Q. Could you explain what the particular label policy applies to? A. Yes. At the time of advertisement the buyer generally recommends whether this clause is applicable or not. There are certain forms of contract in which it is not applicable, on all others it goes in.

Q. Referring you back to 23L46, the form, Plaintiff's 1, is it true that that particular union label policy in addition to flat forms, refers also to cards, booklets and pamphlets, is that correct? A. Yes.

Q. So not only flat forms but also cards, booklets and pamphlets must be printed by a union shop, is that correct? A. Yes.

Q. Mr. Altomare, do you know how long this particular policy has been in existence? A. Well, I came with the Department in 1941 and I was aware of its existence at that time. The policy goes back to April 12, 1934.

Q. And how was it promulgated, sir? A. It was promulgated in an order from the then Mayor LaGuardia.

Q. Do you know what kind of proceeding the policy—

well, how it occurred? Was it an act of the legislature or some Board or something of that nature? A. Well, it came down to us as an executive order.

Q. Could you explain how an executive order comes down? What is an executive order? A. An executive order is an order from the Mayor instructing all mayoral agencis that are concerned in the printing to implement whatever the order may be.

Q. So an executive order would be an order from the Mayor himself to all of those portions of the city under him, would that be a fair statement? A. Today, yes.

Q. You don't know in 1934? A. Well, in 1934 I believe he also had the concurrence of the Office of the Controller and the Law Department.

Q. To the best of your knowledge, sir, has that particular practice which was promulgated in 1934 been continuing in existence up until today? A. Yes.

Q. And how are companies who wish to bid on printing jobs offered by the Department of Purchase notified of this policy? A. I don't know whether there is any formal notification. However, the advertisement is made in the City Record, potential bidders are notified that bids are to be opened on a certain day, they can be picked up at that time, and in the bids, you have the standard form of contract as well as this supplement, and I assume they would read it, as I have just read it.

Q. I see.

Are the bids sent by invitation to printing companies? A. The only requirement that the charter asks of us is that we advertise in the City Record for no less than seven days, seven consecutive runnings.

However, in addition, the Department does not take its job quite that lightly, just say it is in the City Record; we establish lists of bidders. People indicate to us they want to bid on certain items and we classify them and when a bid of a substantial amount of money, or let me

say $2500 or over, either a bid itself or a card notifying prospective bidders who have already placed themselves on this list are notified that bids are being taken.

Q. Now, sir, if a company were to apply to get on your list of notification, do you inquire then whether or not that particular company is a union company or non-union company? A. Well, frankly, that is done by another office, the Office of Vendor Relations. The application comes to the Office of Vendor Relations and it is routed back to the buyer to see if he has any objection, based upon any information the bidder may give.

Q. Do you know whether or not— A. I don't know that answer, sir.

Q. Tell us, sir, if you would, if you know why the union label policy exists today? Do you know why the union policy was started in 1934? A. You know, since I last gave out an affidavit I managed to get a copy of the Executive Order and if I am permitted I would like to read that.

Q. Sure. A. April 12, 1934, under the stationery of the City Record, which means that it must be included formally in the City Record. "Resolved that in order to lend the greatest measure of aid and assistance during the present economic depression to those citizens of our city engaged in the various branches of the printing industry, the following provisions be made a part of each and every contract and open market order issued by the Board of City Record.

"1, that all printed forms hereafter purchased for the use of the City of New York by the Board of City Record shall bear the label of the Allied Printing Trades Council of the City of New York. This rule shall not apply to letterheads and envelopes.

"2, that all bidders be required to certify they operate a union plant and pay the prevailing rate of wages in all divisions of their establishment.

"3, that whever there may arise any doubt about the wages paid and labor conditions in the shop of the lowest bidder on any contract or open market order issued by the Board of City Record, the NRA Compliance Board be requested to submit a report on the bidders' compliance with the code requirements.

"4, that on all requests for bids a statement be included that the City reserves the right to conduct an inspection of the work to be performed at the shop of the contractor during the process of manufacturing.

"5, that the provisions of this resolution shall become effective on and after the 20th day of April, 1934. And that the supervisor of the City Record be and he hereby is instructed to see that each and every one of these provisions are complied with.

"Adopted, all members voting in the affirmative. F. LaGuardia, Mayor, W.A. Cunningham, Comptroller, Paul Windels, Corporation Counsel," and there is a spot for the supervisor of the City Record.

The Court: I would love to know what I am supposed to decide here.

Is there any dispute that New York City requires union shop on its printing?

Mr. Anderson: No, sir, there is not. The plaintiffs contend that the requirement is not reasonable.

The Court: But why get into what the City requires if Mayor LaGuardia went into all this? If there is no issue about it, there is nothing for me to sit here and listen to.

Mr. Anderson: The point we are trying to make is that perhaps in 1934 there was some reason for the policy. Today there is not. I think this particular document fairly exhibits that point. I would ask that it be marked and admitted as Plaintiffs' 2.

Mr. Rothfeld: No objection, your Honor.

Mr. Wolfe: No objection.

Mr. Anderson: I would move Plaintiffs' 1 at this time also, your Honor, which is the form.

(Plaintiffs' Exhibit 2 received in evidence.)

Q. Mr. Altomare, what you say in the document you just read, that is the reason that the City has the union label policy, is that correct? A. Originally, yes.

Mr. Wolfe: No objection to Plaintiffs' 1.

Mr. Rothfeld: No objection.

(Plaintiffs' Exhibit 1 received in evidence.)

Mr. Anderson: May I have a moment, please, your Honor?

(Pause.)

Q. Mr. Altomare, do you know what the reason for the policy is today? A. The reason I don't know.

Q. The question is do you know? Yes or no. A. Can I answer that another way?

Q. Do you know why the policy exists today? A. The reason why the policy exists today is when the last administration came in we questioned the Deputy Mayor as to whether this policy still exists and at that time we were answered, the policy still exists and we have done that every change of administration.

Mr. Anderson: No further questions.

Cross Examination by Mr. Wolfe:

Q. What are the advantages of requiring the union label? A. The advantages, as I see it, is that we are able to effec-

tively police the requirement of the existing order that the prevailing wage rates are paid. Generally the prevailing wage rate is set by the State Labor Law and they follow by a short time the amount that generally the prevailing union at that time pays. We have very many contracts that are term contracts and go over a long period and there are escalation clauses. To effectively police those escalation clauses if we have a standard parameter, certain wage scales set by a union, certain overtime for the first shift and certain overtime for the second shift we can be assured, and so can the comptroller who by law is bound to audit our payments, that escalation clauses are proper and common to everybody. If we had a non-union clause we would never be able to police that overtime. Each man could come in and individually say, "Well, my overtime rate is this," and there is nothing to check it against. Very many of our contracts are time contracts.

For example, the Board of Elections contracts, the ballots, we try to prepare them several months in advance but you can only do so much work because every single election we have three or four or five challenges and many times going through the whole gamut of the judicial system we do not get an answer sometimes until almost the day before and we have a vast amount of overtime.

Having a parameter in there that we are using a certain wage scale and the escalation is "X" percent for the first shift and "X" percent for the second shift or "X" percent for Saturday and Sunday, we have a standard by which we can objectively issue orders.

On the contrary, if we start out with a non-union shop who wrote us suddenly when overtime comes, I have no way of auditing his overtimes bills. Also it makes it very difficult in the first instance to know if I am going to make the right award. A company might be low but because of overtime that we would never have anticipated but which

from knowledge I know occurs on every election, the overtime for that other bidder might be so high as to be effectively higher than the original bid.

There are also other things. The unions generally run schools and they have training programs. They are well up in the latest technology and I am talking of technology where you use scanning by cameras and word processing and computer which is very, very complex. We can get into that and begin to make that part of our contract.

Q. Mr. Altomare, how can you audit union overtime? What are the means you have that you don't have to audit non-union overtime? A. The wage scale of the various unions, whether it is for composition or press work or bindery, are known to us and we known what the percentage overtime is. If a job runs into the shift that runs from approximately 4 to 12, or in a certain shift where the overtime is about 10 percent, I am not sure of the exact figure. When you get to that shift where you go from 12 to 8, there is a second overtime. These kinds of contracts do exist.

The Board of Estimate, for example, meets on a Thursday. They have to have the book down the following day and shortly thereafter it must be put into the City Record. These are the kind. We have legal deadlines. When we print the budget, especially, the budget by law must be passed on a certain day and reprinted in the City Record. It involves vast overtime. Union shops, the man comes in and puts a price. I have no knowledge of what his overtime rate will be. I don't know what it will be in the second shift nor will I know what it will be on Saturday or Sunday.

Q. Mr. Altomare, does your office ever have cause to inspect plans and does that have any relationship to union or non-union shops? A. Yes. According to the regulations set for the Department of Purchase by the Board of

Estimate—the Board of Estimate makes regulations interpretive of the charter. Every bidder who receives an award from us must be qualified. If I have a union shop qualification is very simple. If I have a non-union shop I will have to go out to his plant to inspect him. It is costly. I generally send my printing buyer, generally an engineer from our engineering division, and since all our awards must be concurred in, rather than our awards, our actions, whether we accept them or reject them, must be concurred with by our comptroller I must plan an inspection team to go out and visit the plant. Sometimes I don't that luxury.

The Court: What do they inspect?

The Witness: The inspection takes two forms. One is a financial inspection and that is done internally. Somtimes we obtain a D&B, we obtain bank references, various references to convince us that they are financially responsible. The question which counsel is asking me is the physical inspection of the plant.

The Court: What do you inspect?

The Witness: You look for the various machines necessary to do a type of job.

Q. What are the reasons that certain work does not require a union label? A. That kind of work does not require the expertise that the other contracts do. They are generally continuous forms. There is very little composition on there. You don't require must expertise and there is a vast body workers in New York and outside of New York who do that. Those are generally continuous form.

Mr. Wolfe: I have no further questions of this witness.

Cross Examination by Mr. Rothfeld:

Q. Mr. Altomare, it is your job to pass on and approve or disapprove bids on all substantial New York City printing jobs? A. Yes, every contract in excess of $2500 I must review and I also review some under $2500 if there are questions and the supervisting buyer involved feels he has questions, he comes to me.

Q. If you were informed that the plaintiff, Image Carrier Corporation, had a total of one printing trades employee—

Mr. Anderson: Objection, I don't see the relevancy.

Mr. Rothfeld: May I finish the question?

The Court: Finish the question.

Q. —then what conclusion if any would you make with respect to whether Image Carrier Corporation was a qualified bidder?

Mr. Anderson: Objection.

The Court: I will allow it. I do not see its relevancy but perhaps in terms of constituents it is relevant.

A. I would conclude he is not qualified.

The Court: Because he is not a union shop?

A. A printing job requires three or four elements. You need a compositor, a man to do the press work, a man to do the cutting and the bindery. It would be quite a task for a man to do any kind of contract with one man.

The Court: You say he is inadequately staffed?

The Witness: Right.

Q. Sir, what would you conclude if Image Carrier Corporation did have a union label and submitted a bid and had only one employee with respect to how he intended to perform the work? A. I would have to conclude either he could not do it or he is farming it out, brokering it out, having some kind of a contract to do it.

Q. And if you concluded that he were intending to broker the work out through the mere fact that he had one employee and you were not advised of his intentions, would you accept or reject his bid? A. I would have to reject his bid as being unqualified.

Q. Now, sir, if you were advised that the plaintiff House of Lithography, Inc. did have a union label but had no employees in the printing trades, would your conclusion be the same as it was with respect to plaintiff Image Carrier Corporation? A. Yes.

Q. And you would reject the bid of House of Lithography, Inc. also for the same reason? A. Yes.

Q. Now, if you were advised that the plaintiff Associated Litho-letter Service, Inc., who testified earlier today, had a total of four printing employees, namely one printer, two multilith operators and one folder and cutter, would you deem that company qualified to perform substantial printing work? A. He would be unqualified.

Q. And if you deemed Associated Litho-letter Service unqualified with or without a union label, would you reject his bid? A. Yes.

Mr. Rothfeld: Nothing further.

Redirect Examination by Mr. Anderson:

Q. Mr. Altomare, how often do you inspect printing companies? A. Often enough.

Q. How often? A. In terms of all our contracts, I would say two or three percent of all our contracts.

Q. How often have you had occasion to check non-union shops?

Mr. Anderson: Strike that.

Q. Have you ever had occasion to go out and inspect a non-union shop? A. I think on one of my affidavits I said that has never occurred with one possible exception and I could not locate it.

Q. Mr. Altomare, are you an expert in the printing trades? Do you consider yourself to be an expert in terms of printing processes? A. A total expert, no.

Q. Mr. Altomare, the term "brokering out" was mentioned. Is it not true, sir, that many of the jobs that are done for the City are brokered out by companies that have the ability to exhibit the union label? A. They may be.

Q. And your primary concern is whether or not the job is done; is that not correct? A. Expressed that way it isn't quite right.

Q. When you let a contract you are concerned that you get the work for the price you contracted for? A. I am concerned that I could get the work, yes, sir.

Q. And it is not a responsibility of the printing company to tell you if they are going to broker out the work; is that correct? A. Oh, yes, it is.

Q. Sir, have you had occasion in the course of your duties to check out and determine if non-union shops or what type of wages non-union shops pay? Have you had occasion to look into that all? A. No, I have not recently, no.

Q. Sir, the union label requirement as set forth in the contract, that particular requirement does not only apply to jobs over $2,500, does it, it applies to all jobs? A. That is correct, yes.

Q. When you are talking about a situation, the examples

and hypotheticals that counsel posed to you, is it not true that perhaps a smaller job could be done by one of the shops that counsel described to you? A. Well, under the new charter we will not have any contracts under $1,000 and there are very few jobs that that could apply to.

Q. I don't understand that what you are saying. A. What I am saying is that, under the new charter, we will get only contracts of $1,000 and there are very few transactions—

Q. Who will only get contracts of $1,000? A. The Department of Purchase.

Q. But the label policy will still apply? A. That is correct, it is applicable to whatever agency is permitted to buy.

Q. But the label policy will apply to all bidding contracts whether big or small even under the new policy? A. That is correct.

Mr. Anderson: No further questions,

The Court: You are excused.

We will take our luncheon recess, 2:15.

(Lucheon recess.)

AFTERNOON SESSION

2:15 p.m.

The Court: All right, proceed.

Mr. J. Coleman: Your Honor, allow me to take a moment. Co-counsel also for the firm of Counihan, Casey & Loomis, Francis Thomas Coleman, has arrived in the courtroom. I formally and respectfully request he be admitted by the pro hoc vice.

The Court: All right.

Mr. F. Coleman: Thank you, your Honor.

Mr. Anderson: Your Honor, plaintiffs call Mr. Berger, Sol Berger.

SOL BERGER, called as a witness by the plaintiffs, having first been duly sworn, testified as follows:

Direct Examination by Mr. Anderson:

Q. Mr. Berger, can you tell us, sir, by whom you are employed? A. I am employed by the New York City Board of Education. I work at the Bureau of Supplies.

Q. At the Bureau of Supplies are you responsible for the letting of bids for printing work? A. I am Director of Purchase so I am responsible for letting of bids of all purchasing which includes printing work also, yes.

Q. Does the Board of Education have a policy concerning the kind of printing companies that are permitted to do work for the Board of Education? A. Yes, sir.

Q. What is that policy, sir? A. That the printing work must be done within a union plant located within the City of New York with certain exceptions. No letterheads and envelopes are excepted.

Q. And all other kinds of printing are required to be done by a union shop; is that correct? A. Yes, we do have certain other exceptions occasionally that we do mention specifically in a proposal when we set it out such as continuous forms, multicopy forms, snap-out forms.

Q. All right, sir, I show you exhibits which I guess are what, 3 and 4, Plaintiffs' 3 which is a Form CE-8 of the Board of Education. I will now show you what I have premarked as Exhibit 4 and ask you, sir, if you can tell us what that is? A. This is the type of bid form that we use in what we call non-contract purchasing that is purchasing involving $5,000 or less and the front is filled in with the necessary information as to the item required and it is sent to the prospective bidders.

Q. Does that form have a union label requirement on it, sir? A. Yes, sir, on the reverse side.

Q. What does it say? A. Paragraph 13, union label. "Unless otherwise specified all printing in this contract except envelopes must be done in a printing plant located within the City of New York. The union label must appear on all of the forms required under this contract except letterheads, no-heads and envelopes."

Q. I show you Plaintiffs' 3 and ask you, sir, if you can identify that? A. Yes, sir. This is the terms and conditions that are made part of every contract proposal that we prepare and issue out of our office.

Q. Does that have a union label policy also in that exhibit? A. Yes, sir, it does.

Q. Where is that, sir? A. On page 11, Section No. 27.

Q. What does that say, if you will, sir? A. "Union label. Unless otherwise specified, all printing required by this contract except envelopes must be done in a printing plant located within the City of New York. The union label must appear on all of the forms required under this contract except letterheads, no-heads and envelopes.

Mr. Anderson: Do you have any objection? I move it into evidence.

(Plaintiffs' Exhibit 4 received in evidence.)

Mr. Wolfe: No objection.

(Plaintiffs' Exhibit 3 received in evidence.)

Q. Mr. Berger, can you tell us, sir, if your office sends invitations to bid on specific jobs to various printing firms in the City of New York? A. Yes, sir, we do.

Q. How are the names of the firms placed upon that list? A. More often than not the particular companies have written in a request to the Bureau to be placed on the mailing list for any proposal that may be issued for,

and they specify the type of work or services they want to offer.

Q. Are firms told at that time that only union companies are permitted to bid? A. Well, I would say normally no, because when a company calls in or writes in to request to be placed upon the mailing list, we have a standard form which has information on it which we request them to submit which includes a financial statement. It does not, if I remember, include any information as to whether you are or are not a union firm.

Q. And then if a bidder that puts its name on that particular bid list is sent an invitation to buy and it is determined that it is non-union, would you then advise it that it could not bid on the particluar job? A. I would not advise the company that they could not bid on the job. I would advise the company that if they did bid on the job and were the low bidder, I would have to reject their bid as not being in compliance with that requirement.

Q. Does your agency or department make any inspection of any of the printing companies that does work for you? A. When and as necessary, being when more often than not it is a new company who is a low bidder and we wanted to determine his ability to perform.

Q. Do you routinely do it or do you just do it in a piecemeal way or as a sample? A. We do it only when it is necessary.

Q. It is only done when necessary? A. Yes, sir.

Q. The inspection that you just described, do you do it in every instance, make the inspection in every instance when a new company submits a low bid or do you just do it occasionally? A. We do it occasionally. Depends upon the value of the contract to be awarded.

Q. Do you have any rules and regulations concerning when an inspection should be made and when an inspection

should not be made? A. No, we don't. It becomes a matter of judgment. No specific rules or regulations.

Q. Have you ever inspected a nonunion shop? A. To my knowledge, no. And I would not do the inspection.

Q. Someone under your direction would do it? A. Someone under my direction would do the inspection.

Q. Has anyone under your supervision ever done an inspection of a nonunion shop? A. Not to my knowledge.

Mr. Anderson: That's all we have, your Honor.

Mr. Wolfe: I have no questions of this witness, your Honor.

Cross Examination by Mr. Rothfeld:

Q. Mr. Berger, your standard form of contract proposal sets forth in Paragraph 17: "Labor Law." "The contractor agrees that he will comply with all of the applicable provisions of the State Labor Law."

Do you enforce that requirement?

Mr. Anderson: Objection to relevance.

The Court: No. Overruled.

A. I don't know, sir.

Q. Your yourself don't have that responsibility? A. No. We have various areas within the Board of Education. There is a payment section, an audit section, et cetera.

Q. I see, sir.

Is the New York City Board of Education under the supervision of the New York State Commission of Education? A. Yes, sir.

Q. And the New York State Board of Regents? A. Yes, sir.

Q. And the New York State Education Law? A. Yes, sir.

Q. Now, sir, is the purchasing performed by your Bureau of Supplies in compliance with the sections of the State Education Law that are applicable? A. Yes, sir.

Mr. Anderson: Objection.

The Court: Overruled, but it is too indefinite. Your question is too indefinite. What sections and what labor law?

Q. The sections of the State Education Law—

The Court: Which sections?

Q. Relating to—

The Court: That is not good enough. I am not going to look up and see what sections are related to it. Specify them.

Mr. Rothfeld: I don't have section numbers, your Honor.

The Court: Then turn to something else.

Mr. Rothfeld: Very well, your Honor.

Q. Does the New York City Board of Education—Purchasing comply with General Municipal Law of New York State, Section 103? A. Yes, sir.

Q. Does the New York City Board of Education's purchasing performed by the Bureau of Supplies comply with the "revised regulations" of the Board of Education relating to the execution and performance of contracts?

The Court: Which are where?

Q. Which was adopted by the Board of Education on March 3, 1971—

The Court: Can be found where, Counsel?

Q. Under Calendar No. 18.

The Court: Look, I haven't got a cast of thousands to go over to City Hall and see if I can find Calendar 13.

Get these applicable state statutes, applicable city regulations, applicable ordinances, in front of me in tangible form.

Mr. Rothfeld: Your Honor, I was handed a copy of answers to interrogatories dated July 7, 1976 made by Mr. Berger, which made reference—

The Court: Counsel, I don't care what you were handed.

I direct you to do it the way I told you to do it.

Mr. Rothfeld: Your Honor, I was not given a copy of these regulations although the answer says they are attached hereto as Answer No. 4.

The Court: Unless you make your questions definite, they are totally meaningless to me.

Are you trying to play some kind of shell game or bring out the facts so I can make some intelligent decision here?

Mr. Rothfeld: Your Honor, I would hope, in a posttrial memorandum, if you will permit same—

The Court: No. This is where you put your evidence in, right here.

Mr. Rothfeld: I have no further questions, your Honor, of this witness.

Mr. Anderson: I have no more questions.

(Witness excused.)

Mr. Anderson: Mr. Katz, please.

LEONARD KATZ, called as a witness by the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Anderson:

Q. What is your title? A. Director of Procurement for New York City Health and Hospitals Corporation.

Q. Mr. Katz, is one of the items under your supervision printing? A. That is correct. For the Central Office and for the contracting activity of the corporation. We have other purchasing offices in our system and they are also responsible for printing.

Q. But you are the head of the office, is that right? A. That's right.

Q. You are the Central Office? A. That's right.

Q. Does your particular—does the Health and Hospitals Corporation have a policy concerning the union label? A. Yes, we follow New York City's policy.

> The Court: You can put a leading question. It seems to me the same ad nauseam. There really isn't any dispute about this.
>
> Mr. Anderson: I have one more question concerning this and I will be finished with this witness very shortly.

Q. I show you Plaintiff's Exhibit 5, sir. Is that a memorandum setting forth this policy? A. Yes, sir.

Q. Mr. Katz, can you tell us, sir, how the board of Health and Hospitals determines whether or not a printer will be permitted to bid on a particular job? A. Any vendor can bid on a particular job, sir.

Q. How do you let out contracts to bid? A. As far as the union requirement, sir? If we know by our—

> The Court: Counsel, I said you could ask leading questions. Do you understand me?

Mr. Anderson: Yes, sir.
The Court: Then put leading questions.

A. We know by our listing of suppliers how qualified they are in New York City and they are union shops. We have a listing of same. If a low bidder who bids and we have—he is not on our listing, we check with the Department of Purchases of the City of New York to see if it is a union shop recognized by their office.

That's how we do it.

Q. Do you permit nonunion shops to put their name on your bidding list? A. Of course.

Q. Are they awarded contracts such as described in your documents? A. As long as it is not for flat printing, yes.

Q. How about pamphlets and booklets, are they permitted to bid on on those kind of jobs? A. They would not receive an award. They must be a union shop.

Q. So it is pamphlets, booklets and what other kinds of printing are required to have a— A. General flat printing.

Q. Is this particular kind of work skilled work? It is not skilled work, is it? A. I am not expert enough to give you a definition of what you consider skilled and not skilled.

Q. Is it complex or is it in general just one-sheet work? A. Generally one-sheet work or booklets.

Q. One color work generally, just black and white? A. All our work is generally one color, whether it is snapouts, continuous forms, or flat printing.

Mr. Anderson: That is all.
Mr. Wolfe: I have no questions.

Cross Examination by Mr. Rothfeld:

Q. Mr. Katz, does your policy with respect to which printing work requires the union label follow that of the New York City Department of Purchase? A. Yes, sir.

Mr. Rothfeld: That is all.
The Court: You are excused.
(Witness excused.)

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MITCHELL MORGENSTERN, called as a witness by the plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. Francis Coleman:

Q. Mr. Morgenstern, where are you presently employed? A. The House of Lithography in Long Island City.

Q. What is your capacity with that company? A. Secretary-treasurer.

Q. How long have you been associated with that particular company? A. Three and a half years.

Q. What type of corporate or legal structure does that company have? A. We are incorporated in the State of New York.

Q. How many shareholders are there? A. Two.

Q. Who are they? A. My partner, Frank Pasiello, and myself.

Q. How long have you been in existence? A. Three and a half years.

Q. What type of equipment do you have in your plant? A. We have a Chief 17 offset press and a Chief 15 offset press with a T-51 printing head.

Q. How many employees are employed by your company? A. My partner and myself.

Q. How long have you been in the printing business? A. Seven years.

Q. How about your partner? A. I believe it is about 15.

Q. What type of training have you received on this equipment? A. I received on-the-job training in other places that I was employed.

Q. What other companies in the printing business were you employed by? A. I worked for Rollins Rapid Re-Pro, and Crowell Collier and McMillan, a publishing company in New York City.

Q. Were any of those union companies? A. No.

Q. How about your partner, do you know where he worked previously? A. He worked for the Weaver organization and a few other shops. I don't know all the names.

Q. What type of work does your compay specialize in? A. We do letterheads, letters, brochures, catalogs, folders, self-mailers.

Q. Do you know what has been previously termed as flat form printing? A. Yes.

Q. Would you describe what flat form printing is? A. My definition of that is a flat sheet, one single sheet, printed.

Q. What would this type of printing be used in, what type of products or finished products would be involved? A. It could be a single form, a letter, a flyer, a circular, a bulletin.

Q. Have you performed all of those types of jobs you have just mentioned for private companies in the New York area? A. Yes, we have.

Q. Could you tell us some of your representative customers and the type of work you might do for them? A. Sony. We do a lot of sales bulletins, print lists of their authorized service dealers.

Renfield Importers, we printed at one time the listing of all the ads that are going to appear in various newspapers and magazines to be distributed.

The Irish Tourist Board announcing certain types of events that are going to happen over in Ireland, and the New York Telephone Company with different types of operational changes within New York Telephone.

Q. Is your premises inspected by federal and state in-

spectors for health and safety purposes? A. It was inspected by the New York State Department of Labor.

Q. Have you ever been inspected by any federal or state agency with regard to printing? A. No, we have not.

Q. Has specifically any agency of the City ever investigated your premises to determine what type of equipment you have or what type of workmanship you perform? A. No.

Q. Have you ever bid on work that was involving the City or any of the city agencies that are defendants in this case? A. No, we have not.

Q. Why is that? A. Because of the knowledge that I had that to bid on city work you had to exhibit the union label.

Q. How did you know of this policy? A. Well, I had heard it throughout the trade.

Q. It is common knowledge throughout the printing industry? A. I would say it is common knowledge.

Mr. Rothfeld: Objection. The witness has not been qualified on expertise on common knowledge.

The Court: Sustained.

Q. Aside from this union label requirement, would your firm be interested in bidding on city work? A. Yes, we are.

Mr. Rothfeld: Objection to what an interest would be.

The Court: Overruled. I don't understand your objection.

Mr. Rothfeld: Irrelevance, your Honor.

The Court: Overruled.

Q. Would your company bid on city work if it were eligible to do so? A. Yes.

Mr. Rothfeld: I move to strike on the ground that the record does not show that the witness is ineligible to do so. So it is a hypothetical question.

The Court: Technically perhaps but actually it is not a hypothetical question. The question is not well framed.

Would you bid if you thought you could get it?

The Witness: Yes.

The Court: Why don't you think you can get it?

The Witness: I can't get it because I am not allowed to exhibit the union label.

Mr. Rothfeld: I move to strike. The witness has stated as a fact an incorrect statement.

The Court: Overruled.

Q. Are you or your partner a member of any printing industry union or any other union? A. No.

Q. Did you ever receive correspondence from school districts concerning an invitation to bid on a work for a community school project? A. Yes.

Mr. Francis Coleman: I would like to have this marked.

(Plaintiff's Exhibit 6 marked for identification.)

Q. Mr. Morgenstern, I show you what has been marked as Plaintiff's Exhibit 6 for identification and ask you if you can identify that. A. Yes, I can.

Q. What do you identify that as? A. An invitation to bid from Community School Board District 24.

Q. Was that addressed to your company? A. Yes, it was addressed to the House of Lithography.

Q. When is it dated? A. December 19, 1975.

Mr. Francis Coleman: I would ask that this be admitted into evidence as Plaintiff's Exhibit 6.

The Court: Just for my edification, I am showing you Court Exhibit A.

Is there a union label on there?

The Witness: Yes.

The Court: Which is the label?

The Witness: Right down here.

The Court: The sign there. All right.

Mr. Rothfeld: Your Honor, we have no objection to the receipt of this exhibit in evidence and we note that there is no union label on this work.

The Court: Received in evidence.

(Plaintiff's Exhibit 6 received in evidence.)

Q. Mr. Morgenstern, showing you Plaintiff's Exhibit 6 in evidence, could you tell us what happened in response to this correspondence from the Community School District No. 24? A. In receiving it, in reading it over, one of the requirements was that it must be done by a union shop in the City of New York and in reading that we called Mr. Sanfilippo, who is the Community Superintendent of that school board and asked him how enforceable that was, and he told us that to bid on this job—

Mr. Rothfeld: I move to strike, hearsay.

The Court: Overruled.

Mr. Rothfeld: I respectfully except.

The Court: You don't have to except. You have an exception for the past 45 years. You don't need to take an exception. I suggest you read them some time.

Q. Mr. Morgenstern, you can answer the question. A. Mr. Sanfilippo stated that it was a requirement by the City and that we would have to meet that requirement of a union label in order to bid on it.

Q. Did you subsequently bid on it? A. No, we did not.

Q. Did you examine the work attached to that correspondence, the sample specification that was attached to it? A. Yes, we did.

Q. Is this the type of work which your company is capable of doing? A. Yes.

Q. Would you be able to do work of similar quality to that which was attached to the correspondence had you been allowed to bid on it? A. Yes.

Q. And would you have bid on that project but for being told you were not eligible? A. Yes, we definitely would have bid on it.

Mr. Rothfeld: Objection.

The Court: Overruled.

Mr. Francis Coleman: I have no further questions.

Mr. Wolfe: I have no question of this witness.

Cross Examination by Mr. Rothfeld:

Q. Mr. Morgenstern, I show you Plaintiffs' Exhibit 6 which you have just looked through and after looking through testified that the particular work encompassed by Plaintiffs' Exhibit 6 or bidding on such work requires the union label. I ask you to look through this exhibit again consisting of some eleven pages and ask you where in this document there is any reference to the requirement that a union label be held by a bidder or where, if anywhere, a union label appears on this document?

Mr. Anderson: Objection. He testified he called and was told he could not bid on it because it was not a union company.

The Court: I suppose the better objection would

be that the document speaks for itself. That would be the rule of evidence.

Mr. Rothfeld: Your Honor permitted the witness to testify after inspecting this document although the Best Evidence Rule applies that this document—

The Court: Sustained. Next question.

Q. Have you made any inquiry, Mr. Morgenstern, of the New York City Department of Purchase with respect to which types of printing work require the union label and which types do not? A. No.

Q. Have you made any such inquiry with respect to the Department of Purchase of the New York City Board of Education? A. As far as I knew, work such as that that I was asked to bid on required the union label and I did not investigate it any further.

Q. Did you make any investigation of the New York City Health and Hospitals Corporation with respect to their requirements concerning which work requires the union label and which do not? A. No.

Q. Have you sent any letter to any office of the New York City Board of Education or Community School District 24 eliciting responses with respect to which jobs required union labels? A. I was told that all jobs did.

Q. Sir, please answer my question. A. No, I didn't write to them.

Q. I see.

You were told by one individual that all jobs required a union label? A. I was told by the Superintendent of the District.

Q. I understand you have no salaried employees; is that correct? A. Just my partner and myself.

Mr. Rothfeld: That is all.

The Court: You are excused. Next witness.

(Witness excused.)

Mr. F. Coleman: We would like to call Mr. Slater, your Honor.

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LEE SLATER, called as a witness by the plaintiffs, having first been duly sworn, testified as follows:

Direct Examination by Mr. F. Coleman:

Q. What is your position with Image Carrier? A. I am President of Image Carrier.

Q. How long have you held that position? A. I have held that position for two years.

Q. How long have you been associated with Image Carrier Company? A. Two and a half years.

Q. How long has the company been in existence? A. Two and a half years.

Q. Where is your company located? A. We are located at 30 Rockefeller Plaza, midtown New York.

Q. What type of legal entity is your company? A. It is a corporation.

Q. Where is it incorporated? A. It is incorporated in Delaware.

Q. How many employees do you have, Mr. Slater? A. I have three.

Q. What classifications do they hold? A. One is a pressman, the other one is a messenger and the third is an office manager who generally answers the phones and talks to customers when I am not in.

Q. What type of equipment does your company own? A. The equipment that we have is—it runs in sizes up to 1117. We have one press which is called an A.B. Dick 1600 System which is a high volume automated printing press. Then we have two other presses, one an A.B. Dick 360 and the third a Multilith 1250.

Q. What type of printing projects do you normally perform, what type of work do you normally do? A. The type of work that we normally do is in the line of reports and presentations for major corporations.

Q. Could you give us a representative sampling of those major corporations? A. Well, for instance, we did a presentation for Skidmore, Rawlins & Merrill on a major contract they were trying to get. We are doing a job for Curtis & Davis which is another architecture firm which is a report on a prison system. We do quite a bit of work for NBC on their sales reports. We do work for Touche Ross. We do quite a bit of their educational reports, booklets, presentations that they use for their accountants. We have done work for a company called Theodore Barry, which is a management consulting firm with offices in New York and Los Angeles and a report on their Western Carolina Telephone System. We also do work for RCA, Amstar, Scholastic Magazines and a number of other corporations which do not come to mind.

Q. Mr. Slater, from the sound of things you do quite a bit of work. Do you have occasion to bring in outside printers, employees that are not normally employed by your organization on a fulltime basis? A. That is the way that we keep our overhead down. Whenever we get busy we hire additional people or as the work requires, we hire additional people or we have people who come in on a parttime basis.

Q. Is this work done in your shop? A. Absolutely, all of it.

Q. Do you personally check the quality of the people that you bring in on a parttime temporary basis as far as their competency to run your equipment? A. Well, quality is one of the things that we sell to all our customers. A lot of these customers have their own in-house printing staffs and they do not find the quality adequate and that is the reason why they give us the work.

Q. And you do check the competency of all the employees that work on your equipment? A. Absolutely.

Mr. Rothfeld: Object to the line of leading questions.

The Court: Overruled.

Q. You have heard the term "flat form printing" used previously by some of the other witnesses, have you not? A. Yes.

Q. What is your understanding of that term? A. Well, a form is generally something that is used to hold information and it is printed normally in one column or on a single sheet of paper.

Q. Is this normally what is described by the term "flat form printing?" A. That is what I consider it to be.

Q. Is your equipment and your pressman capable of doing this type of work? A. Absolutely.

Q. What percentage of your work does flat form printing as you have described it constitute? A. I would say about 20 to 25 percent.

Q. And are you capable of doing booklets and pamphlets and directories and other types of reports? A. Right. Among the things that I described, a number of them were booklets.

Q. Has your company been inspected by any officials from New York State with regard to your quality and competency to perform printing work? A. Yes.

Q. Can you describe the circumstances under which that inspection took place? A. Yes, we applied to New York State to be qualified to bid on their printing.

Q. What did they do in response to your requests to be deemed a qualified bidder? A. They sent us a form which we filled out and then, afterwards, they send an inspector down to see our facilities were adequate and we were then placed on bid lists.

Q. You did pass the inspection by the New York State authorities? A. Absolutely.

Q. Have you done work for New York State? A. No, I haven't.

Q. Have you bid on such work? A. Yes, I have.

Q. Have you ever been disqualified for bidding on such work? A. No, I haven't, except for not having the lowest price.

Q. With respect to the City of New York or any of the defendant agencies in this case, have they ever inspected your premises? A. No, they haven't.

Q. Have you ever tried to bid on City work? A. Yes, I have.

Q. Would you tell me the circumstances under which you attempted to submit a bill on City work? A. Well, I received the bid form from the City but in the form there was a statement which said that there was a requirement for a union label and I didn't want to do the work without the label and risk it being rejected.

Q. Did you hear from any other sources that you would not be eligible to do New York City work because you have union label requirement? A. Yes. I heard that that was so but I never—

Mr. Rothfeld: Move to strike hearsay from unidentified persons.

The Court: Sustained.

Q. But you did receive a letter from New York City that specifically said that in order to bid you would have to be able to exhibit the— A. It was on the bidding contract itself.

Q. Has this—

The Court: The City of New York form?

The Witness: Yes, sir.

Q. Has that requirement deterred you from submitting any further bids to the City? A. Absolutely.

Q. If that requirement were removed, would your company bid on New York City work? A. Absolutely.

Q. Do you believe that your company is qualified to do this type of work? A. Yes, sir.

Mr. Rothfeld: I object to the witness' beliefs.

The Court: I will take it as his opinion.

Q. In your opinion would your company be qualified to do booklets, pamphlets and other forms of flat form printing for New York City? A. Absolutely.

Q. Do you do similar type work for other customers? A. We do many different types of work for many customers.

Q. Are any of your employees union members presently? A. No.

Q. Have they ever attempted to be represented by a union organization? A. No.

Mr. F. Coleman: I have no further questions, your Honor.

Mr. Wolfe: I have no questions of this witness.

Cross Examination by Mr. Rothfeld:

Q. Mr. Slater, you have one employee now in the printing trades? A. Yes, sir.

Q. Have you complied with the requirements in the subpoena which I served upon you that you produce certain documents?

Mr. Anderson: Objection, your Honor.

The Court: To the form of the question, yes.

Q. Mr. Slater, have you brought any documents with

you which are set forth in my subpoena which I served upon you last week? A. Yes, I have.

Q. Can I see them, please? A. Can I go down and get them?

The Court: Sure.

Mr. Rothfeld: If your Honor please, is your ruling with respect to the wages and pension or lack of pension paid to this witness' employee to be the same as that of the employees of House of Lithography, Inc.?

The Court: I surely think it is irrelevant but if you want to put it in for what it is worth, go ahead.

Q. What is the name of your printing employee? A. Israel Colon.

Mr. Anderson: We would object as to relevancy, your Honor.

The Court: I will sustain the objection but take it over your objection. If it is brief so we can get it in the record. There is no jury here.

Q. Is Mr. Colon covered by a pension plan? A. No, he is not.

Q. What is his hourly rate of pay? A. I can't tell you that but his weekly rate is $170 per week. He works 37½ hours.

The Court: Is that less than union scale?

The Witness: I don't know, sir.

Q. Sir, you have testified that you have placed bids with New York State authorities? A. Yes.

Q. Which agencies? A. Central New York State Purchasing, Albany.

Q. How many bids? A. Two.

Q. Were you ever accepted as low bidder? A. No.

Q. Did you make any inquiry of the New York City Department of Purchase with respect to what types of their work require the union label and what types do not? A. Yes, I did.

Q. In writing? A. I don't recall.

Q. Did you make any inquiry of the New York City Department of Health and Hospitals to the same effect? A. No, I didn't.

Q. Did you make any inquiry of the New York City Board of Education to the same effect? A. Yes, I did.

Q. In writing? A. I don't recall that either.

Q. It is not a fact, sir, that the bulk of the work performed at 30 Rockefeller Plaza is continuous form work? A. It is not a fact.

Q. What percentage of your work is other than flat form printing? A. I'd say three-quarters of our work is other than flat form printing but the term "continuous form" is completely—doesn't have anything to do with this. We do any continuous form work.

Q. Three-quarters of your work is other than flat form printing? A. What I consider other than flat form. In the form of reports and presentations rather than forms but it is the same type of process that you do for flat form.

Q. Is Israel Colon covered by an medical plan? A. No, he is not.

Q. Welfare plan? A. No, he is not.

Mr. Rothfeld: That is all.

Redirect Examination by Mr. F. Coleman:

Q. You mentioned you did make inquiry of the Department of Purchase of the Board of Education about being put on their bidding list? A. That's right.

Q. What was the response you received? A. We received the bid forms which had the requirement on that the union label was required. We always read through the form before we bid on them and I didn't want to risk having the work rejected because we printed it without the label.

Mr. Rothfeld: Move to strike the non-responsive answer.

The Court: Overruled.

Q. And as a result of that qualification in response to your inquiry, you did not submit any further bids; is that right? A. That's right.

Mr. Rothfeld: Objection. That is not a question. That is a statement.

The Court: Overruled

Mr. F. Coleman: No further questions, your Honor.

Mr. Rothfeld: Move to strike that answer.

The Court: Denied.

(Witness excused.)

Mr. Anderson: The plaintiffs call Edward Blank.

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Edward Blank, called as a witness by the plaintiffs, having first been duly sworn, testified as follows:

Direct Examination by Mr. Anderson:

Q. Mr. Blank, can you tell us, sir, what your occupation is? A. I am the Director of Printing Management at Printing Industries of Metropolitan New York, a Trade Association.

Q. And, sir, can you tell us what your job entails, what you do generally in your position? A. Yes. I work with printers in the New York locality regarding all of their myriad of problems such as estimating, production, training, what particular equipment they should have for the particular product which they have. Where they can seek out new markets and anything relating to how to have a better printing business.

Q. And in the capacity of your work, sir, do you have occasion to go to both union and non-union printing plants? A. Yes, sir.

Q. Do you correspond with those union and non-union printing plants? A. Yes.

Q. Can you give us a brief background of your knowledge of the printing trades? A. I don't know whether I can make it brief or not. The printing industry—are you seeking my past as well?

Q. Yes, sir. A. I started in the business in 1929 and have been in it 47 years. 46 years. It is 47 years, excuse me. And I studied at the School of Printing in Baltimore, Maryland. I learned my trade in a trade composition plant in Baltimore, Maryland. Went over to the Government Printing Office for 10 years in Washington, D.C. I rose to the position of Assistant to the Technical Director of Government Printing Office in Washington, D.C. Came to New York in 1946 as Plant Manager of Uniform Printing and Supply. Then became Plant Manager of Rogers, Kellogg, Stilson, one of the largest lithographic plants here in the east at that time. Then we were bought out by Publishers Printing, Rogers, Kellogg, which formed Publishers Printing-Rogers, Kellogg, in 1955. I was Manager and Assistant to the President in that position.

Came over to the Association in 1958 where I have served as their Director of Printing Management ever since.

Q. Have you been a union member at times? A. Yes.

When I first came to New York out of the Government Printing Office, I had a traveler's card in Typo-6 which I deposited here.

Q. Mr. Blank, have you testified as an expert in the printing trades in other courts? A. Yes, I have.

Q. Have you testified as an expert in the printing trades in the Federal Court here in New York? A. Yes, I have.

Mr. Anderson: Your Honor, we submit Mr. Blank is an expert in the printing trades.

The Court: All right.

Q. Mr. Blank, in the course of your position do you have occasion, you said already you had occasion to correspond with both union and non-union plants in the City of New York. Can you tell us, sir, how many proportionately union plants there are and how many non-union plants there are in the City of New York? A. I recently checked into our records at the Association. In find that we have 350 open shop plants and 250 union shop plants.

Q. In the course of your experience, have you observed a trend in this area concerning whether or not plants are union or non-union? A. Yes, there is a trend. There are more open shop plants than there are union shops.

Q. In the course of your job, have you had occasion to determine the qualifications of a particular shop specifically, sir, in regard to the qualifications of a union shop versus a non-union shop? A. The qualifications in my opinion depend upon management entirely. A good open shop with a good manager will produce good work and good productivity. And a good union shop will likewise do the same thing. The management will not settle for anything less than a good quality job, they will get exactly that whether it be an open shop or a union shop.

Q. Then it would be fair to say, sir, that the fact that

a shop is a union shop doesn't insure that it will produce high quality work? A. Absolutely not.

Mr. Rothfeld: I object to leading.

The Court: I will take it. There is no jury. Go ahead.

Q. Mr. Blank, would it be fair to say also that some non-union shops are better than some union shops?

Mr. Rothfeld: Same objection. Leading conclusory.

The Court: There is no jury.

Q. You may answer the question. A. I would say—would you repeat the question, please?

Q. The question I asked you, sir, would it be fair to say that some non-union shops are better than some union shops? A. Yes. The better open shop is the better quality shop than a poor or sub-standard union shop, no question about it.

Q. In the course of your moving around the City and contracting printing companies, you have seen both poor union shops and poor open shops; is that correct? A. That is true.

Q. To follow up on this line: Then whether or not a shop is union, a union shop does not determine its competency; is that correct? A. Absolutely not.

Q. Mr. Blank, you heard the witness, the previous witness testify about the inspection of a printing shop that is done by City contractors. Are you familiar with the inspection, for example, done by the Bureau of Purchase of printing shops in the City of New York? A. To some extent I am, yes, sir.

Q. What does that entail, if you know? A. Well, I'm often called by the Department of Purchase of the City of

New York to give them qualified bidders for certain types of printed matter and I am able to give them this kind of material because I do visit so many shops here. I do find that their inspectors, if they were doing the job which I think they are supposed to do, would be examining these shops previous to giving out some of the contracts to make sure that they are in truth qualified to do the work. It would seem to me that most owners of shops do try to make their plant appear a lot better quality and a lot more productive and a lot less expensive perhaps than other shops do and you can't just take the word of an owner in saying that he is qualified to bid on a particular job.

So it appears to me that any good buyer of printing, and certainly I would say that the New York City Department of Purchase should be in that category, would examine very carefully all plants regardless of union or open, whether they are in truth qualified to do the work.

Mr. Rothfeld: I move to strike this speech of the witness.

The Court: Overruled.

Q. In your correspondence with the City, Mr. Blank, have they complained to you or discussed with you the fact that the City contracts only require the union label?

Mr. Rothfeld: I object. There has been no testimony of correspondence. The question relates to an unidentified—

The Court: Overruled. Please, I do not want speeches. We have a new Code of Evidence and if you just would either state it in terms of some known new Rule of Evidence or some number, I would be happy to rule. I do not need your speeches. You are not in some administrative board. You are in a courtroom. Overruled. Proceed.

A. May I have the question again, sir?

Q. I asked you, sir, in your correspondence with the City people you mentioned earlier that people would call you and ask you for responsible bidders. Do they discuss with you the union label policy and its effect upon obtaining responsible bidders? A. Yes, they would tell me that the union label is necessary and I could only give them union printers.

Q. Now, are you familiar, Mr. Blank, with whether or not other government agences require the union label, for example, the Federal Government, do they require the union label as a requirement to bid on particular jobs? A. No, they do not. The Government Printing Office does not require the union label.

Q. What do they determine as to whether or not they will either submit--will submit a bid—

> Mr. Rothfeld: Objection. No expertise established, your Honor, and the statutes and regulations speak for themselves.
>
> The Court: Sustained.

Q. You heard, Mr. Blank, discussion by Mr. Altomare of the overtime problem that he attributed the Department of Purchase having with printing. Are you familiar with the contracts let by the Department of Purchase? A. Yes, I am.

Q. What kind of provisions do they have concerning overtime? A. In all of their contracts they ask for an overtime hourly rate within certain hours after the first shift, they ask for your overtime hourly rate; for the second shift and if the job happens to go into a third shift operation they ask for the overtime hourly rate for it, so there is always an hourly rate spelled out for the overtime in the contract.

Q. Have you, sir, had occasion to determine the working conditions in both union and non-union shops in the City of New York? A. Yes, sir.

Q. And how would you describe them between the two different kinds of shops? A. There again I would go back to saying, where management is good and where management is effective, you will find a very clean, well-run shop and an open shop, you will find the same in a union shop. There is no difference.

Q. Sir, in regard—

> The Court: I do not think the answer is responsive. You asked about working conditions. He told you about clean, well-run shops. The ball did not come back over the net.

Q. Sir, in your going around to the various shops what kind of factors would you look at in examining the work of a particular shop? A. I'd look at the condition of the equipment, the kind of equipment that was being used. Whether the men were being trained properly as evidenced by the fact of what their productivity was, time sheet reporting. The quality of the work. I would look at the samples of the work being done after it was produced. I would look at all the things involved in a well-run, profitable shop to see just exactly what was lacking, what their strengths were and what their weaknesses were.

> The Court: What about wage scales, pension benefits, fringe benefits?
>
> The Witness: In some open shops, those benefits—
>
> The Court: Would you look at those?
>
> The Witness: Yes, sir. That's part of my consulting business, to look at that as well.

Q. What is the result of this comparison? A. There are some open shops that are paying equally as high as union shops. On the other hand there are some that are not paying as much. That sort of thing.

Q. Of the various printing trade companies in the City of New York that have the ability to exhibit the union label with regard to the wage scales, have you made a comparison of those wages? A. Yes. I have compared the wage scales of the Allied Printing Trades Council plants and the ALA No. 1 plant which is Amalgamated Lithographers Association, another union, which is acceptable under the contract.

I have also looked at the wage scales of District 65 which is an offshoot union. I have looked at the Teamsters contract and I have looked at the recommended wage scales for the Master Printers Association of the Printing Industries of the Metropolitan New York, and I found that we are directly in the middle, that the open shop section, Printing Industries of Metropolitan New York, is about just in the middle. It is not as high as the highest union scale but it certainly isn't as low, anywhere near as low as the lowest union scale.

Q. From all factors that you have listed in your comparison, would you say, sir, that the fact that a shop has a right to exhibit a union label insures that that shop would be able to do high quality work?

Mr. Rothfeld: Objection, your Honor.
The Court: Overruled.

A. In my opinion the fact that the man has a union label on the printing is no evidence that he is doing top quality work.

Q. Sir, are you familiar with the types of work that generally—types of printing work that are generally required by the City of New York, the Department of Pur-

chase, the Board of Education, the Department of Health and Welfare? A. Yes, sir. I have done a considerable amount of that work when I managed Rogers Kellogg-Stilson.

Q. In terms of complexity, what kind of work is required by the City? A. City work as a general rule is a very simple kind of printing matter. It is not complex. It doesn't entail any multicolor work, good register, or fancy scheming of let's say impositions and layouts, all kinds of creative work. It doesn't require any of that. And in our opinion the work is very simple and can easily be done by a good qualified shop.

Q. You know the qualifications for the union label, the kind of work that fits within the union label, is that correct? A. Yes, I do.

Q. The snapout and continuous forms, does that require any more complex kind of work or is it more or less difficult than the kind of work that requires a union label? A. Well, if the plant doesn't do any continuous form work or doesn't do any snapout work, obviously it is going to be very difficult for that particular plant to perform.

The Court: What is continuous form?

The Witness: Continuous form is a roll of paper starting at one end of the press and being fan-folded, a multipart business form being fan-folded in the delivery end of the press at which you are able to write, sometimes it is no carbon required, sometimes there is a carbon inserted in it. Usually there is no carbon required. This set at the end is, in fan-form, usually put into some sort of a register. A metal holder where you write out your invoice or business form or whatever it is and it duplicates itself on the forms beneath it so it is called continuous form only because it is an un-

broken stream, fan-folded on the end, criss-crossed on the end.

The Court: Is it printed on a rotary press?

The Witness: Yes. It is printed on a rotary web press. A business form, a snapout form can be printed on a flatbed or let's call it a regular offset press and it can be printed on a regular letterpress for that matter, and is then—carbons are interleaved with it—it is glued at the top in the little stub which you snap out later on to pull the carbons out from between the forms. It is also a multipart set. That is called a snapout set and as I say, if the plant is unequipped to do this, they can get, have an outfit of this sort of thing so, therefore, you have seen a great tendency for the continuous form and business form plants to be a specialty operation, only doing that particular thing in that particular plant.

Q. In regard to this type of work, the kind of companies that do this kind of work, are they unionized plants? A. Starting back at the beginning, they were not unionized. Then some became unionized but now the greater majority at the present time are not unionized.

Q. The term "flat form work" has been bandied about in these proceedings. Can you explain what that is? A. There would be different opinions according to whoever takes it. My opinion of it is that flat form is merely a form, a one-sheet printed on either one side or two sides, cut to a definite size like 8½ x 5½, 8½ x 11, 8½ x 14, and it is just a single sheet sort of thing.

Q. Is it complex printing? A. Very, very simple printing. Can be done on the smallest equipment.

Q. The type of pamphlets that are required by the City of New York, are they complex, do they require complex

printing? A. No, they too are not complex so long as you have press equipment to take multiples of two pages; in other words, if it is 8½ x 11 you must have a press that will take 11 x 17 because you are unable to saddle stitch that until—unless you have two pages across. You can't bind it, in other words, saddle stitch it so I would say that that's a simple form of work on an 11 x 17 press or larger; this work can be done very simply.

Q. The booklets required by the City, do they require a complex operation? A. The long runs would require complex operation. By that I don't even mean a complex operation. I mean it would require specialized equipment; for instance, if it was 8½ x 11, 16 pages to 32 pages in the hundred thousands, it would require web equipment which very few printing plants have. That would be a different story. So depending upon the quantity of the pamphlets would depend upon whether it would be a complex operation or not.

Q. Now, deviating for a minute, getting back to the contract requirement of the City, do you know, sir, if a bond is required by persons entering into contract with the City for printing work? A. Yes, sir. In the large contracts a bid deposit, as it is called, is required by the City to indicate that the contractor in good faith will do his portion of the work properly.

Q. Sir, do you know what kind of training programs are provided by the four nonunion printers in New York City? A. Yes, sir. The Master Printers section, open shop section of Printing Industries of Metropolitan New York, have training courses for open shop craftsmen, have had them for the last 20 years, to my knowledge.

Q. Mr. Blank, can you tell us, sir, are there any advantages that a contractor might have in dealing with an open shop, the City might have?

Mr. Rothfeld: Objection; irrelevant.

The Court: Overruled.

A. Yes. There are some advantages. One would be the flexibility of the men in an open shop. For instance, a compositor in an open shop, if the press room needs some help or if a bindery needs some help, a man can be transferred from that position to another one to take care of the peaks and valleys, so to speak, so that the work can be accomplished in that much shorter of a period. In getting this man so flexible, it is evident that he will learn a lot more about what the other crafts do in a particular printing plant and by working on it himself, he has this knowledge and is better able to accomplish certain types of matter that way.

So there are some advantages in flexibility.

The Court: What is the difference in the union shop in this regard?

The Witness: The union shop will keep the person, if he is a comp, he will not be allowed to go into the pressroom, even if he sits idle, he will have to stay there while the pressroom union, which is a separate one, wants to make sure its men do the work and therefore they cannot move people around. They have one specific job and this they must do.

The Court: How does that work to the disadvantage of the person who is buying the service?

The Witness: Well, it works to a disadvantage, if you are not able to keep your composing work completely busy, then the hourly rates of that composing room has to take care of the idle time of that person. Therefore the rates will go up to the person buying the printing and yet he really is not at fault. It wasn't his fault that he couldn't keep the composing room busy, don't you see?

The Court: The end result simply resulting in a lower bid by the nonunion shop, is that it?

The Witness: True. That's one of the reasons why the nonunion shop can come in with a lower bid because he can move his people around to take care of the slack periods, you see. Keep them all busy, in effect.

Q. Do the overtime rules of the union have an effect on the advantage offered by an open shop? A. Yes, the overtime regulations do call for penalty wages over in a shorter period of time than the usual open shop does. The usual open shop will probably go four hours without—at time and a half and sometimes even more, whereas the union shop requires a certain amount of time and then it goes into, depending on the union, it goes into double time and even more than that.

Q. Is the selection of persons permitted to overtime work have an effect on this rate? A. Yes. The selection of people to do overtime work in some of the union shops by seniority and by who is supposed to get the work will sometimes cause you to take a man who is doing the work off of it when the shift ends and put another man on it who hasn't had the continuity of that operation to finish it up on overtime, for which that man is being paid additional wages, penalty wages, whereas the man who was on the job formerly would have been paid the additional wages but would have been able to produce more as a result of continuity.

Q. Then, sir, is the fact that the company has the ability to exhibit the union label—does it have any effect on the quality of the work bid upon?

Mr. Rothfeld: Objection.

The Court: Overruled.

A. I can't see any.

Mr. Anderson: I have no further questions.
Mr. Wolfe: I have no questions of this witness.
Mr. Rothfeld: May I have a moment, your Honor?
The Court: Surely.

Cross Examination by Mr. Rothfeld:

Q. Mr. Blank, what is your position with the Printing Industries of Metropolitan New York, Inc.? A. I am the Director of Printing Management.

Q. And is the Printing Industries of Metropolitan New York, Inc. a division of the Printing Industries of America, Inc. which originally filed a class action in this case? A. Yes. We are the local association of PIA.

Q. PIA meaning? A. Printing Industries of America.

Q. Of America, Inc.? [illegible]ht.

Q. You are not here un[illegible]poena, of course? A. Yes, I am.

Q. You are? A. Yes, sir.

The Court: It is going to weigh heavily in my determination.
Mr. Rothfeld: A bit of levity, your Honor.
The Court: It sure is. It is a lot of levity.

Q. Have you, sir, inspected the plant of Image Carrier, Inc.? A. No, sir.

Q. Have you inspected the premises of House of Lithography, Inc.? A. No, sir.

Q. Have you inspected the premises of Associated Litho Letter Service, Inc.? A. Yes, sir.

Q. When was this, sir? A. I'm the president of a condominium in which Associated is in that particular building. I have inspected it about maybe a year, a year and a half

ago. They are members of Printing Industries of Metropolitan New York; therefore in my regular duties, I was asked to come up and speak with them for some problem or another and I came up and inspected the plant.

Q. Sir, you referred to a condominium. Is this a residence condominium? A. No, that's the first industrial condominium in America. 545 West 46th Street.

Q. You stated that you once carried a traveler's card in Typographical Union No. 6? A. Yes, sir.

Q. When was that? A. Well, I came up here in 1946 so I would assume that I held it in 101 in Washington for about seven or eight years. I carried it up here for a period of three or four years.

Q. When did you start to work for nonunion management? A. When did I start to work for nonunion?

Q. Yes. A. Nonunion management was in 1947, I guess.

Q. And this was while you continued to carry a Typographical Union No. 6 card? A. I had the card when I took over management of Uniform Printing—I'm sorry—of Everready Label Corporation which was the open shop.

Q. You testified that there are some 250 union shops, in which organization? A. Printing Industries of Metropolitan New York.

Q. Do you know how many union shops located in New York City are not members of Printing Industries of Metropolitan New York, Inc.? A. No, sir, I do not. I tried to get it but I couldn't.

Q. Pardon? A. I tried to get that information but I couldn't get it.

Q. Now, you testified that there are some union—some open shops, meaning nonunion shops, that pay as high as union scale, is that your testimony? A. Yes, sir.

Q. Would you care to give us some names so that we may check this testimony?

Mr. Anderson: Objection.

The Court: Overruled.

A. You want me to give you names of those plants that pay over the union scale, the union minimum requirements, is that it?

Q. If you know any. A. Oh, yes.

Q. How many? A. I can name a few.

Q. How many? A. I have to give it some thought. I have some records to look at and things of that nature, but I would venture to say I could give you three, four, five.

Q. And that is out of the 350 open shops that are members of your organization? A. Yes, sir.

Q. You are not prepared to give us those names now, are you? A. No, I don't have that information.

Q. Sir, you testified that your organization has a recommended wage scale? A. Yes, sir.

Q. Have you inspected the payrolls of your membership or any of them to determine whether these recommendations set forth in this recommended wage scale are complied with? A. No, we have not.

Q. Now, on behalf of your organization, have you sent any correspondence to your membership setting forth which types of work require the union label in order to bid for New York City work and which types do not? A. No, sir, we have not.

The Court: We will take a very short recess.
(Recess.)

Q. Mr. Blank, as part of your duties, do you inspect the contracts of the unions in the City of New York, the printing unions? A. Yes, sir.

Mr. Rothfeld: May we have this marked as Defendant's A through E for identification.

(Defendant's Exhibits A through E marked for identification.)

Q. Mr. Blank, I show you Defendant's Exhibit A for identification and ask you whether this is a true copy—

Mr. Anderson: Objection, your Honor, there is no way how he can know whether it is a true copy.
The Court: Sustained.
Mr. Rothfeld: Will you stipulate—
Mr. Anderson: No, I will not.
Mr. Rothfeld: May I finish my question?

Q. —in accordance with what you agreed to with me to do last week, will you stipulate that Defendant's Exhibit A for identification is in fact the union agreement of Local 1, Defendant's Exhibit B for identification is in fact the pension plan, Defendant's Exhibit C for identification is in fact the dental benefits, Defendant's Exhibit D for identification is in fact the sickness and accident fund, and Defendant's E is in fact the surgical fund?

Mr. Anderson: I will stipulate to that.
The Court: So stipulated.
Received.

(Defendant's Exhibits A through E received in evidence.)

Q. Mr. Blank, when you testified earlier that you believed there were three or four open shop companies which paid union scale rates, did you mean that they paid union scale rates across the board to all their printing employees or that they paid such rates to selected employees? A. There would be some of both categories. Some pay se-

lected rates to various people and some pay across the board according to the union scales.

Q. Can you name any which pay across the board to all their printing employees at this time? A. Not at this time.

Mr. Rothfeld: That is all.

Redirect Examination by Mr. Anderson:

Q. Mr. Blank, you were testifying earlier about PIA, Printing Industries of America, and Printing Industries of New York, where you were.

Does that association have both union and nonunion members, the New York association? A. The New York association has both union and nonunion members, yes.

Q. You are not employed by the nonunion section exclusively of that trade association, are you? A. No, sir, I am not.

Q. So you have dealings with both union and nonunion members? A. Yes, sir, with all 850 members.

Q. You testified in response to a question on cross-examination that you have had occasion to inspect Associated Litho.

Can you tell us, sir, as a result of your inspection, are you of the opinion that they are qualified to do the work required by the City of New York? A. Certain types of work required by the City of New York, Associated can do very, very nicely.

Q. In regard to Associated Litho, sir, in your opinion, can they do the work that the union label requirement exists for, by the label union requirement of the City of New York and the various other agencies of the City?

Mr. Rothfield: Objection. The question is vague.

The Court: Can you make it more specific?

Mr. Anderson: Yes, sir.

Q. In your opinion, can Associated Litho do the work that is subject to the union label requirement? A. Some of it, a great deal of it they can do.

Q. Could they do flat forms, pamphlets and booklets? A. Yes, sir, they can do flat forms within certain quantities. If they get into very large quantities, obviously they would be outpriced. They could not do it because they don't have the equipment for large runs. Small pamphlets, smaller amounts they can do without any question and there is a great deal of that originating from the City.

Q. And can they do quality work? A. Yes, sir.

Q. Mr. Blank, can you tell us, sir, in regard to the kind of training that non-union printers are given, in addition to the kind of training provided by Printing Industry of New York, do these particular companies have on-the-job training programs? A. Yes, sir, the open shop is forced into having a good strong on-the-job training course because obviously they have no source of manpower as the union plants do. So you will find that the open shop as a general rule will have on-the-job training and they will promote their people starting from probably a porter right on to a small press, right on to a larger press. At the same time always using their best man as the one who trains these people into their next position.

As a result, they learn all the steps in the shop very gradually and very completely and they usually do it by the most skilled man in the shop who is being held there primarily because he has done such a good job and is so able and willing to train.

Q. Is on-the-job training as effective or more effective than the training programs outside of the printing shop? A. It may be more effective, strangely enough, because you don't have enough outside training facilities to do

this work properly and there are many more printers than there are places in which to train them. So the in-plant training is by far the best method to do this and, as I said, if management won't settle for less than a real fine quality workman, that is what they will get. If they work at it they will get it but that is the only way to do it, train from within and it seems that the only likely way to do this is to really take your best people and train those coming up. Make the advancement worthwhile for those that are under. They know they can go someplace. Obviously they will be more willing to learn and, motivation being the prime factor, the open shops have the advantage of doing everything within their own plant and the shop also has the flexibility of moving people around, teaching them different skills and finding the one which they are best suited to do in the union shop.

Unfortunately, if a fellow is a pressman and he has seniority and he does not do too good a job, they can't move him out to a lesser skilled job which they can do in a union shop. Maybe the guy will turn out to be a very fine workman in a lesser skilled job and be of real value all the way around to himself and to the plant.

Mr. Anderson: No further questions.

Mr. Wolfe: I have no questions.

Mr. Rothfeld: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Anderson: The plaintiff rests, your Honor.

Mr. Wolfe: Your Honor, the sole witness that was going to be called by the municipal defendants was already called by the plaintiffs and, therefore, accordingly, the municipal defendants rest.

Mr. Rothfeld: I call Mr. Bernard DeSiano.

BERNARD DE SIANO, called as a witness by the intervening defendants, having first been duly sworn, testified as follows:

Direct Examination by Mr. Rothfeld:

Q. Mr. DeSiano, what is your position? A. I am a business representative for the New York Printing Pressmen and Offset Workers Union, Local 51 AFL-CIO.

Q. What is the jurisdiction of Local 51? A. We have jurisdiction in various plants in letter press, printing, offset printing, graphics stripping, plate making.

Q. Now, sir, I am addressing myself to the testimony of Associated Litho Service that the company employs one journeyman printer, two multilith operators and one folder and cutter.

If that journeyman printer were a member of Local 51, what would his minimum weekly wage be?

Mr. Anderson: Objection.

The Court: I will take it over your objection just in the interest of getting it in the record.

A. On the multi, $300 a week.

Q. Not multilith, a journeyman printer. A. On the multi, which I understand he said he had two multis, $300.

Q. $300— A. Per week.

Q. Is the multilith operator's weekly wage? A. Right.

Q. On the letter? A. On the letter press—

Q. What would it be? A. 334.

Q. That would be for the first shift? A. First shift. 358 for the second shift or 356, and 365 for the second shift.

Q. That's for a week of how many hours? A. 34½ hours.

Q. With time and a half for overtime? A. Time and a half for overtime.

Q. What would the weekly wage of Associated Litho's folder and cutter be if he were represented by your union? A. $335 per week.

Q. And is that pursuant to this contract? A. Yes. That's pursuant to that contract. As far as the press work is concerned. And to the bindery contract.

Mr. Rothfeld: I offer it in evidence.

Mr. Anderson: We object to relevancy.

The Court: You have a standing objection to relevancy of any of this. Take it.

(Defendant's Exhibit F received in evidence.)

Q. Are your members covered by pension plan? A. Yes.

Q. What would the pension be if Associated Litho's employees were under your contract and were to retire? A. Approximately $180 if he was retiring today.

Q. $180 per— A. Per month.

Q. Are your members covered by life insurance? A. Yes.

Q. Up to what amount? A. $26,000.

Q. What type of life insurance? A. A limited age 65.

The Court: Group life?

The Witness: Yes.

Q. Are your members covered for hospitalization and major medical? A. Yes.

Q. How much? A. $25,000 major medical and—

Q. How many days hospital? A. 180 days.

Q. In the event that your members or the employees of Associated Litho were your members and were to be laid off, would this hospitalization and major medical continue while they were unemployed? A. It would continue for themselves and their dependents for six months.

Q. And their dependents includes children to what age? A. Age 19.

Q. And if they are full time students? A. If they are full time students, age 23.

Q. If Associated Litho's employees were covered by your contract, would they have a guaranteed vacation? A. Yes.

Q. How long? A. Four weeks.

Q. Four weeks? A. Four weeks a year.

Q. Holidays? A. Eleven holidays.

Q. Would they be covered by a sick leave policy? A. Five days sick leave.

Mr. Rothfeld: Your witness.

I offer F in evidence.

The Court: It was received.

Mr. Anderson: No questions.

The Court: You are excused.

(Witness excused.)

We will adjourn now until tomorrow.

Mr. Rothfeld: The defendant rests, your Honor.

The Court: Plaintiffs rest?

Mr. Anderson: Yes, your Honor.

The Court: All right. I would like briefs in ten days. Exchange of briefs. Exchange and serve briefs in ten days. There will be no extension of time so don't ask for one.

Mr. Francis Coleman: What date would that actually be, your Honor?

The Court: Can't you count to ten?

Mr. Francis Coleman: I want to know whether we are actually counting today, your Honor.

The Court: The 16th.

If I want reply briefs, I'll ask for them so don't serve reply briefs auomatically. I don't need them unless I ask for them.

* * *

## Plaintiff's Exhibit 1

## Form 23L

City of New York
Department of Purchase

### SUPPLEMENT TO STANDARD INSTRUCTIONS TO BIDDERS FOR USE IN PRINTING ONLY

(These supplementary instruction take precedence over the Standard Instructions)

1. Printing Samples.—(a) Unless otherwise stated in the bid, the only official sample for a printing job is the one with written specifications attached which is on file in the sample room (1911 Municipal Building). It is the bidder's responsibility to base his bid upon this sample and specifications. Upon receipt of a written order, successful bidder must call for the sample in Room 1911, Municipal Building, New York, N. Y. 10007.

(b) The Vendor shall in all instances follow the type style which may be specified, or must submit the equivalent to the Department of Purchase for approval. The decision of the Commissioner of Purchase, approving or rejecting the equivalent submitted, shall be final.

(c) In the event an award is made and the vendor finds a discrepancy between the specifications and the sample, he shall contact the Printing Unit and obtain in writing either a modification of the specifications or a statement that the specification governs.

2. Sizes.—In describing dimensions, the first figure mentioned indicates the width of the forms, e.g., 8½ x 11 as a given size would mean that the form is 8½ in. wide and 11 in. long. Forms shall be of the size (width and length in inches) as called for by the specifications.

3. Paper Stock.—Only standard, Mill Brand watermarked Bond and Ledger, Onion Skin and Mimeograph paper shall be used, when called for in the schedule, which shall conform to the New York City specifications.

4. Variance from Estimated Quantities.—This paragraph sets forth the extent to which the quantities originally estimated in the contract may be varied by the City, as distinguished from "Overruns or Underruns" (paragraph 11), which the printer may encounter in his operations. Of the four variations shown below, only the one stipulated in the "Special Instructions to Bidders" or in the schedule will apply to the contract.

(a) The Commissioner may increase or decrease the total estimated amount of the contract by not more than five (5%) percent to allow for correcting the estimated quantities at the time of ordering and for other changes;

(b) The Commissioner may increase by not more than twenty-five (25%) percent or decrease by not more than ten (10%) percent, the total estimated amount of the contract to provide for any variation in the approximate number of pages of an item, for author's alterations in excess of the estimated amount set forth in the schedule and for other changes;

(c) The Commissioner will order any of the items encompassed in the award, in such quantities as may be required by the agencies for which the Department of Purchase is functionally responsible, be such quantities more than or less the estimates in the schedule;

(d) The Commissioner may make such variations in the quantities and amounts as will be indicated in the

"Special Instructions to Bidders" or in the schedule.

5. Union Label.—Unless otherwise specified in the schedule, all work must be done in a union printing plant located within the City of New York. The union label must appear on all printing except letterheads, noteheads and any other printing excepted in the schedule.

6. Workmanship.—All work shall be executed in a satisfactory, efficient and workmanlike manner. All composition must be neat, free from battered or broken type; press work should be properly made ready, producing a clear, clean, sharp and even impression. Electrotypes or other plates used must be replaced with new ones when, through use or any other cause, the impression ceases to be sharp and clear.

7. Form Number.—The form number, the quantity, the D. P. number and year together with the union label, must be shown on all printed forms.

(a) The type to be used shall not be larger than six point light face face Gothic No. 2, or six point Roman upper and lower case, and shall be arranged in one line, and must be placed adjacent to composition or form or card. Parentheses and periods must not be used.

(b) The department form number, at the discretion of the using agency and with the approval of the Department of Purchase, may be located elsewhere; however, it must be placed adjacent to the composition of form or card.

(c) The instructions set forth in paragraphs (7) and (7a) will not apply to letterheads or noteheads.

*Plaintiff's Exhibit 1, Form 23L.*

8. Photo-Engraving, Etc.—

(a) All photo-engravings and electros, when ordered by the Department of Purchase for filling part or parts of the order, are to become the property of The City of New York, and shall be delivered with proofs with the completed order, within ten (10) days thereafter, to Storehouse B-53, New Dock and Water Streets, Brooklyn, N. Y. 11201.

(b) Signature cuts are to be delivered direct to the buyer of printing of the Department of Purchase, Room 2237, Municipal Building, Manhattan. The signed receipt for such delivery must be submitted to the Storekeeper with the completed work, or within five days, so that the Storekeeper may certify to the fact that a complete delivery has been made on the order.

(c) On items requiring the City Seal, *one electro,* for reproduction purposes, of the seal may be obtained from the printing buyer, Room 2237, Municipal Building, Manhattan.

9. Proofs.

(a) The vendor must submit two sets of proofs of all work to the Department for which it is intended. Proofs must be delivered by a responsible employee of the vendor, or by registered mail, return receipts requested. Unless proofs thus submitted are approved by the Department, the inspector reserves the right to reject the goods when delivered.

(b) All sets of proofs submitted to the various departments must bear a stamp, executed by an authorized member of the Department, reading as follows:

*Plaintiff's Exhibit 1, Form 23L.*

Order No. ..... Item No. .....

D[illegible] submitted to Department .....

Date returned to vendor by Department .....

Approved by .....
Signature Title

(c) Unless this stamp is executed on each set of proofs, no allowance of time will be granted to absorb delay claimed in the return of proofs.

(d) No charge for correcting typographical errors at variance with copy will be allowed.

(e) All proofs must be properly read and all office corrections made before submitting proofs to the using agency. Proofs submitted must be free of all marks except queries. If carelessly-read proofs are submited, they will be returned immediately for revision. The City will charge the vendor with all costs incurred in proofreading the vendor's office errors.

(f) The time elapsed between the dates of delivery of proof by the vendor and the return of proof to the vendor and the time necessarily taken by the vendor to make any required revisions will be excluded from the time specified for delivery of the entire completed work.

10. Facilities.—(a) It will be incumbent upon the successful bidder to prove conclusively to the Commissioner of Purchase, before the awarding of the contract, that he has the necessary equipment and facilities properly and satisfactorily to execute the amount of the approximate quantities in the time and manner specified.

(b) The successful bidder who is awarded a contract shall maintain adequate stock and production records;

these records must be retained for not less than three years after the termination of the contract and shall be available for examination by the City at any reasonable time within this period.

11. Overruns—Underruns.—(a) The Department of Purchase is opposed to the acceptance of overruns. However, it recognizes that, in many types of printing, small overruns are unavoidable, and will accept such overruns up to 5% of the quantity ordered subject to 20% discount in price, (except pamphlets and books,) provided the funds are available in the applicable appropriation account. Such five percent (5%) overrun may be delivered with the original shipment, subject to availability of funds.

(b) Likewise, the Department of Purchase will accept an underrun not exceeding five percent (5%) of the quantity ordered, and an amount equal to eighty percent (80%) of the pro rata basis of the bid price will be deducted for such quantity as may be short of the quantity ordered.

(c) Overruns on Pamphlets and Books are to be invoiced on a pro rata basis for additional stock, presswork and binding only.

(d) Whenever the exact quantity of an order is undelivered but the shipment is regarded by the vendor as being complete, delivery tickets and invoices must be rendered for the exact amount delivered and marked "Final Delivery".

(e) On numbered forms, cards or envelopes, exact quantity must be delivered. No overrun or underrun delivery will be accepted.

12. Packing.—(a) Unless banding is called for, all printing must be delivered in packages of 500 or 1,000 each as directed, for sizes 4¼ x 5½ in. to 8½ x 14 in. inclusive. Sizes above 8½ x 14 shall be delivered in packages of

250 or 500 each, as directed. Where packing instructions are not given on the order, blanks and circulars are to be delivered in packages of 500. All packages must be wrapped in strong Kraft paper at least 24 x 36 in.—55 lbs. (480 sheets to ream), sealed with gummed tape.

(b) When banding is ordered, forms are to be banded in lots of 500 or less as directed and wrapped in Kraft paper at least 24 x 36 in.—55 lbs. (480 sheets to ream), sealed with gummed tape. When forms are banded, the width of the band shall be not less than 75% of the longer dimension of the form.

(c) Packages must be marked with the name of the Department; the Bureau; the Borough; the Form No. D. P. Order, and item numbers as shown on the order and must be delivered in good condition. Each item must be packed separately. No supplies are to be delivered in cases unless arranged for with Storehouse B-53 in advance. Delivery packages shall not weigh over 70 lbs. Cards when ordered delivered in boxes shall be so packed as to fit snugly in the boxes. The bid prices shall include packaging, banding, boxing and outer delivery wrapping, unless otherwise stipulated.

13. Delivery Point—Inspection.—All supplies must be delivered within the time specified to the Department of Purchase Storehouse, New Dock and Water Streets, Brooklyn, New York, free of delivery charge and subject to inspection of the Office of the Comptroller.

Whenever a direct delivery is made to a department in response to an emergency request, although the destination on the purchase order is the Department of Purchase Storehouse, the printer will communicate with the Printing Unit, Division of Inspection, Office of the Comptroller (WHitehall 3-3600, Ext. 568) to obtain approval of the direct delivery and to arrange for inspection at the delivery point. (He will also furnish promptly, to the Storekeeper, the

signed receipt from the delivery point together with a sample of the printing delivered.)

14. Replacement.—The vendor will be allowed one replacement of a rejected delivery, unless otherwise indicated in the special instructions or the schedule.

15. Final Acceptance.—In case of any controversy or disagreement as to the quality or quantity of the articles delivered, the decision of the Comptroller shall be accepted as final.

16. Type Use.—(a) The type set and/or electrotypes used for any printed matter ordered by the City shall not be given, leased, loaned, or sold by the vendor to any individual, firm or corporation except The City of New York, unless the Commissioner gives his specific approval in writing. This applies to type as originally set, reset, plates, or any other form of duplication.

(b) Any violation of the foregoing shall be cause for the cancellation of the agreement. In addition, the City shall recover the costs of the composition, not as a penalty, but as the liquidated damages that the City will suffer by reason of said prohibited use of type.

(c) Any agreement shall be considered breached, if the vendor produces or reproduces for sale or any other purpose, any printing ordered by the City, or permits any individual, firm or corporation to do so, except as set forth in paragraph 17, "Subletting of Work." The vendor agrees to pay the City as liquidated damages, and not as a penalty, five dollars ($5) for each and every copy of printing so produced.

(d) Violation of clauses (a) and (c) above shall be deemed sufficient cause for declaring the vendor to be an irresponsible bidder.

17. Subcontracting of Work.—The vendor shall not subcontract all or any part of any operation involved in the work called for, without the written consent of the Commissioner of Purchase. This does not apply to photo-engravings or electrotypes.

18. Invoices.—(a) All invoices for printing must be rendered in triplicate and mailed to the Department of Purchase—Bureau of Audits and Accounts, Municipal Building, N. Y. 7, N. Y. With the exception of blank books and related items, a finished copy of the work must accompany the invoices to permit of proper auditing. Invoices for orders that are stamped "Old System" must be mailed direct to the using agency.

(b) Where overtime is involved, the printer must furnish evidence that the overtime was properly authorized by the Department of Purchase or by the using agency in an emergency. If no provision or insufficient allowance for overtime had been included in a contract, the contract may be modified as mutually agreed upon by the Commissioner and the contractor and as approved by the Comptroller and the Corporation Counsel. In the case of open market orders involving overtime, a memorandum of change may be issued.

(c) When rendering invoices for printing in which author's alterations or overtime is involved, the printer must furnish with the invoices copies of all subsequent proofs, copy of the final proof and finished approved copy of the job. The final proof must be signed and dated by the person approving it on behalf of the using agency. Invoices involving author's alterations or overtime will not be accepted by the Department of Purchase unless accompanied by the foregoing papers. In the absence of such papers the invoices will be returned to the printer with the notation "insufficient information furnished for payment."

(d) Cancelled matter will be paid at a fair and just price and is to be billed for separately by the vendor. Proof of claim must be submitted with the invoice. All claims for author's alterations, overtime and cancelled matter will be subject to audit by the City.

19. Payment.—Payment will be made for the net number of units accepted at the price bid per unit, overruns or underruns excepted. Proper invoices when submitted will be payable within thirty (30) days after either their receipt or after delivery of the supplies, whichever date is later. When partial deliveries are made during the month, such invoices will be payable within thirty (30) days after either the end of the month, or after the receipt of invoices, whichever date is later.

If public necessity requires the use of any printing which is subsequently found not to comply with the specification requirements, and if no definite deductions are prescribed, the Comptroller will make such deductions as he shall determine to be reasonable, based on the results of analyses, tests or examinations.

20. Memorandum Receipt.—All supplies when delivered must be accompanied with *separate* memorandum receipts in quadruplicate, for each final destination, as sample shown on page C-4.

Vendors must supply themselves with these forms. Color may be selected by the vendor. Original and duplicate memorandum will be retained by the Department of Purchase, the triplicate will be retained by the Office of the Comptroller, and the quadruplicate will be signed and returned to the representative of the vendor. All deliveries are subject to count and examination by the inspector.

*Plaintiff's Exhibit 1, Form 23L.*

**DELIVERY MEMORANDUM**

*Received in apparent good order from*

Date .....

Contract No. .....

Order No. .....

D. P. No. .....

Ship. Inst. No. .....

Our Order No. .....

For: Department of .....

Address: .....

Room No. .....

Borough—

County .....

| PACKAGES | ITEM NO. | QUANTITY | NATURE OF SUPPLIES |
|---|---|---|---|
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**Received by**.....

**Title**.....

**Plaintiff's Exhibit 2, Resolution of April 12, 1934.**

COPY

Extract from minutes of meeting of Board of City Record, held April 12, 1934. 11:15 A.M.

BOARD OF CITY RECORD
OFFICE OF THE SUPERVISOR

NEW YORK, April 12, 1934.

STEPHEN G. KELLEY,
*Supervisor.*

RESOLVED, that in order to lend the greatest measure of aid and assistance during the present economic depression to those citizens of our City engaged in the various branches of the printing industry, the following provisions be made a part of each and every contract and open market order issued by the Board of City Record;

1. That all printed forms hereafter purchased for the use of the City of New York by the Board of City Record shall bear the label of the Allied Printing Trades Council of the City of New York. This rule shall not apply to letterheads and envelopes.

2. That all bidders be required to certify they operate a union plant and pay the prevailing rate of wages in all divisions of their establishment.

3. That wherever there may arise any doubt about the wages paid and labor conditions in the shop of the lowest bidder, on any contract or open market order issued by the Board of City Record, the N.R.A. Compliance Board be requested to submit a report on the bidder's compliance with the code requirements.

*Plaintiff's Exhibit 2, Resolution of April 12, 1934.*

4. That on all requests for bids a statement be included that the City reserves the right to conduct an inspection of the work to be performed at the shop of the contractor during the process of manufacturing.

5. That the provisions of this resolution shall become effective on and after the 20th day of April 1934, and that the Supervisor of the City Record be, and he hereby is instructed to see that each and every one of these provisions are complied with.

ADOPTED, all members voting in the affirmative.

F. LaGuardia
Mayor

W. A. Cunningham
Comptroller

Paul Windels
Corporation Counsel

.....
Supervisor of the City Record.

**Plaintiff's Exhibit 3, Form CE-8 of Board of Education.**

(See opposite ☞)

FORM C.E. 8. (Part 1 of 2 parts) Revised 1/20/75 (25M)

SERIAL No.

BOARD OF EDUCATION CITY OF NEW YORK

# STANDARD FORM OF CONTRACT PROPOSAL

Sealed bids will be received by the Superintendent of School Supplies of the Board of Education of the City of New York, at his office, Room 513, 44-36 Vernon Boulevard, Long Island City, N. Y. 11101.

Until 2:30 P.M., on .....

Bids will be publicly opened and read at 2:30 P.M. on the date and place stated above.

FOR

FURNISHING AND DELIVERING

*NOTE: Bidder must insert, under No. 2, number of each page containing bid.

1. *Name of Bidder* .....

*Address of Bidder* ..... *Zip Code* ..

2. **Page Number(s) Containing Bid Prices* .....

.....

.....

USA 116-475
(ED 4-23-71)

Pet/7

EXHIBIT
U. S. DIST. COUR
S. D. OF N. Y.

3

named may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor, and delivered to the Secretary or Assistant Secretary. Nothing herein contained shall be deemed to preclude or render inoperative service of any notice, letter or other communication upon the Contractor personally.

Whenever in the trial of any action growing out of this contract it shall be necessary or required to prove the service of a notice as herein prescribed, an affidavit showing the service in the manner herein required to have been made by the person making the affidavit shall be presumptive evidence of such service upon first proving that the affiant is dead or insane, or that with due diligence his attendance cannot be compelled.

### Delivery and Completion

21. The Contractor shall deliver the supplies called for in the schedule within the period of the contract and within the delivery time specified on the order or written request which delivery time shall be in accordance with the terms of the schedule or specifications or instructions to bidders.

If the Contractor is delayed in delivering any supplies by any act or omission of the Board of Education, the Contractor shall be allowed the number of days or parts thereof he was so delayed, all of which shall be determined and certified in writing by the Superintendent, whose certificate shall be binding and conclusive upon the Contractor. No claim for damages or delays shall be made by or allowed to the Contractor for such delays.

When delivery is delayed due to causes beyond the control of the Contractor, including but not restricted to acts of God or of the public enemy, acts of the government, war, acts of war, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, delays by a common carrier or

unusually severe weather, the Contractor shall be allowed the number of days or parts thereof he was so delayed provided that he promptly notifies the Superintendent in writing of the causes of the delay. The Superintendent shall ascertain and determine the facts and extent of delay, which determination shall be binding and conclusive upon the Contractor. Should such delays inconvenience the Board by creating an emergency and thus necessitating the purchase elsewhere of the supplies involved, the Superintendent shall have the right to effect such purchases in the open market without liability to the Contractor and to the exent such purchases are made the Contractor will be relieved of the necessity of furnishing such quantities.

The Superintendent may refuse an extension of time to the Contractor unless the Contractor makes application therefor to him in writing to be filed with the Superintendent prior to the delivery due date. Whenever the Superintendent, in exercising his discretion, shall extend the delivery time, and such extension shall fall beyond the contract period, such contract shall be deemed to have been automatically extended.

The delivery and acceptance of any supplies, after the time fixed to deliver the same, shall not be deemed a waiver of the right of the Superintendent to terminate this contract or to require the delivery of any undelivered supplies in accordance with this contract.

## Government Regulations

22. In all instances where a contract has been entered into and full compliance with the specifications of an item under contract subsequently becomes impossible due to government regulations, the Contractor shall notify the Superintendent of School Supplies of such fact and shall indicate and describe exactly the manner and extent of the

variation between the article which he proposes to furnish and the specifications for the item. If the claim of the Contractor is deemed well founded by the Superintendent, he may authorize and accept delivery of an article, the specifications of which shall be as near alike to the specifications of the item contracted for, as may be permitted by such regulations; if, in his opinion, the proposed delivery be of lesser value, he may agree on condition that the price be revised to the extent of the difference in value.

### Suspension of Deliveries

23. The Superintendent reserves the right of suspending the delivery of the Supplies or any part thereof, if he shall deem it for the interest of the Board so to do, without compensation to the Contractor for such suspension other than extending the time for completing the deliveries as much as he may have been, in the opinion of the Superintendent, delayed by such suspension.

### No Estoppel

24. Neither the Board nor the City, nor any department or officer thereof, shall be precluded or estopped by any return or certificate made or given by the Superintendent, or other officer, inspector, agent or appointee of the Board or the City, under any provision of this agreement from at any time (either before or after the final completion and acceptance of the work or supplies and payment therefor, pursuant to any such return or certificate) showing the true and correct amount and character of the work done and supplies furnished by the Contractor, or any other person under this agreement, or from showing at any time that any such return or certificate is untrue or

incorrect, or improperly made in any particular, or that the work or supplies or any part thereof do not in fact conform to the specifications; and neither the Board nor the City shall be precluded or estopped notwithstanding any such return or certificate and payment in accordance therewith, from demanding and recovering from the Contractor such damages as it may sustain by reason of his failure to comply with the specifications.

### Competent Workmen

25. The Contractor shall employ only competent workmen, in performing this contract and if notified in writing that, in the opinion of the Superintendent, any employee of the Contractor is incompetent he shall forthwith replace him and shall not again employ such person in the performance of this contract.

### Acceptance of Final Payment

26. The acceptance by the Contractor, or by any person claiming under the Contractor, of the final payment or any part thereof as audited by the Comptroller, whether such payment be made pursuant to any judgment or order of any Court or otherwise, shall operate as and shall be a release to the Board from all claims of and liability to the Contractor and to the Contractor's representatives and assigns for anything done, furnished or for or relating to the work or supplies or for any neglect of the Board or of any person relating to or affecting the work done or Supplies furnished hereunder. No interest shall be allowed on the amount certified as, or audited by the Comptroller as the final payment or on any part thereof which the Treasurer of the City is ready and willing to pay.

*Plaintiff's Exhibit 3, Form CE-8 of Board of Education.*

UNION LABEL

27. Unless otherwise specified, all printing required by this contract except envelopes must be done in a printing plant located within the City of New York. The union label must appear on all of the forms required under this contract, except letterheads, noteheads and envelopes.

COMPTROLLER'S CERTIFICATE

28. Before the notice of acceptance is issued, the Board will have obtained from the Comptroller a certificate indicating that there remains unexpended and unapplied a balance of the appropriation or fund applicable hereto sufficient to pay the estimated expense of performing the contract, as certified by the officer making it.

Contracts providing for furnishing of quantities of supplies in accordance with needs or requirements of the Board during an extended period will require endorsement upon the contract, from time to time as supplies are ordered, the sufficiency of the appropriation applicable towards the payment of the supplies as and when ordered.

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**Plaintiff's Exhibit 4, Bid Form for $5,000 or Less.**

(See opposite ☞)

A ACHMENT NO. 2

BUREAU OF SUPPLIES
4640 VERNON BOULEVARD
LONG ISLAND CITY, N. Y. 11101

BOARD OF EDUCATION CITY OF NEW YORK

# BID INVITATION-QUOTATION

SOL BERGER
Director,
Bureau of Supplies (A)
TELEPHONE
STILLWELL 6-0000

SEALED BIDS FOR FURNISHING SUPPLIES OR SERVICES, SUBJECT TO TERMS AND CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS LIST PAGE OF THIS BID IN THE SUPERINTENDENT OF SCHOOL SUPPLIES, BID OFFICE, ROOM 813, 4640 VERNON BOULEVARD, LONG ISLAND CITY, N. Y. 11101

DATE 2:30 P.M.

DELIVERY TO:

## BIDDER'S ACCEPTANCE *TO BE FILLED IN BY BIDDER

UPON ACCEPTANCE OF THIS BID THE UNDERSIGNED OFFERS AND AGREES TO FURNISH, DELIVER WITHIN _____* CALENDAR DAYS AFTER DATE OF ORDER AND PLACE WHERE DIRECTED BY PRINCIPAL OR OTHER AUTHORIZED PARTY ALL OF THE ITEMS ON WHICH PRICES ARE QUOTED AT THE PRICE SHOWN OPPOSITE EACH ITEM, SUBJECT TO ALL TERMS AND CONDITIONS CONTAINED AND INDORSED HEREIN. PRICES ARE NET AND INCLUDE PREPAYMENT BY THE VENDOR OF ALL TRANSPORTATION AND OTHER CHARGES. DELIVERY IS REQUIRED WITHIN 30 DAYS UNLESS OTHERWISE SPECIFIED.

BIDDER _____

ADDRESS _____
(STREET) (CITY) (ZONE NO.) (STATE)

BY _____ DATE _____
(SIGNATURE) (TITLE)

FOR USE OF BUREAU OF SUPPLIES ONLY

| REQ. NO. | TAG NO. | ORDER NO. | A/C YR. |
|---|---|---|---|
| | | | 19 |

NO. OF INVITATIONS _____ NO. OF BIDS RECEIVED _____

ESTIMATE ACCEPTED AND AWARD MADE TO LOWEST BIDDER WHO COMPLIES WITH SPECIFICATIONS, PRICES REASONABLE AND NOT IN EXCESS OF CURRENT MARKET PRICES.

FOR BUREAU OF SUPPLIES

| REQ. NO. | UNIT OF MEASURE | DESCRIPTION | UNIT PRICE | TOTAL COST (FOR ITEM) |
|---|---|---|---|---|
| | | | | |

PAGE ____ OF ____

*Plaintiff's Exhibit 4, Bid Form for $5,000 or Less.*

All quotations are subject to the following terms and conditions unless modified on the reverse side of this bid. Upon acceptance of this bid the terms of the bid shall apply to all orders issued as a result of such acceptance and supersede any conflicting printed Terms and Conditions appearing on such orders. Any order resulting from this bid will be subject to the following express condition and agreement on the part of the successful bidder:—

Definitions—The Board of Education is hereinafter referred to as "The Board." The Superintendent of School Supplies is hereinafter referred to as "The Superintendent."

1—Bidder

(a) Pricing—Bidder shall insert unit price and extension against each item. In the event of a discrepancy between the unit price and the extension and/or Aggregate Class Total, the unit price will govern.

(a-1) The New York State Fair Trade Law does not apply to or authorize the fixing or limiting of prices of "trade mark or brand" commodities offered for sale or sold to the City of New York (Gen. Bus. Law, Section 369-A, subd. 3).

(a-2) The Bidder, in submitting this bid, certifies that the prices quoted herein are not higher than the prices at which the same item is sold in approximately similar quantities to any purchaser whomsoever.

(3) Discounts—Cash discount will not be considered in determining the low bidder.

(c) Unbalanced Bids—A class bid, showing evidence of obviously unbalanced bidding, may be declared informal.

*Plaintiff's Exhibit 4, Bid Form for $5,000 or Less.*

(d) Foreign Goods—A bidder offering a foreign item must so indicate in his bid.

(e) F.O.B. Delivery Point—Bid must be F.O.B. delivery point, unloaded and placed where directed by principal or other authorized party, unless otherwise indicated in the proposal.

(f) "Or Equal" Bidding—When a bid standard is used it indicates character and quality of the article and the bidder may offer an equal, subject to approval by the Superintendent. If bidder fails to name a substitute, he will be required to furnish the bid standard.

(g) Bids to be considered shall be received not later than the time stated. Bids sent by mail are sent at the risk of the bidder.

(h) Bids will not be accepted from bidders in arrears to the City of New York or to the Board of Education of the City of New York upon debt or contract, and is not a defaulter upon any obligations to the City of New York or to the Board of Education of the City of New York.

Samples—Samples or drawings required shall be delivered free of charge as requested. If not mutilated or destroyed in the examination bidder will be notified to remove same at his expense. If samples are not removed within thirty (30) days after written notice to the bidder, they shall be considered as abandoned and the Board shall have the right to dispose of them as its own property.

2—Award

(a) Items and Class Award—When class bids are indicated, bidder must bid on each item in the class and award will be made by class.

(b) Items may be combined and awarded as a group if there is a saving in ultimate cost by the reduction of the

number of orders issued. A bidder desiring to bid "no charge" on an item, in a class must so indicate; otherwise the bid for the class will be construed as incomplete.

(c) Tie Bids will be decided by the Superintendent.

4—Time for Performance—In all instances when the bid fails to state the time within which performance is to be completed and the bidder fails to state a time, the time for full and complete performance shall be (20) twenty calendar days from date of purchase order.

5—Delivery

(a) Inspection shall be made at the point of delivery unless otherwise specified.

Any food or drug or other commodity which is found by the Comptroller to be unwholesome or otherwise unfit for human consumption or use shall not be removed by the Vendor until it is examined by the Department of Health. If condemned, such commodities shall be disposed of in accordance with the rules and regualions of the Sanitary Code.

(b) Containers and Reels—All containers and reels shall become the property of the Board unless otherwise specified.

(c) Delivery Hours—Delivery shall be made between 9 A.M. and 4 P.M. Monday through Friday and at other times by special arrangement.

(d) Delivery Time—Shall be computed in calendar days from the date on the order.

(e) Marking—Each container of multiple units, or items otherwise packaged shall bear a label, imprint, stencil or other legible markings stating name of manufacturer or supplier. Board of Education Order Number and any other markings required by specifications.

(d) New Merchandise—Unless otherwise stated in the quotation or orders, deliveries must consist only of new and unused merchandise.

6—Delays—Non-Delivery—Rejections

(a) Vendor's Fault—If the Vendor fails to make delivery within the time specified or if the delivery is rejected the Superintendent may obtain such commodities or any part thereof from other sources in the open market or on contract. Should the new price be greater than the order price, the difference, plus the liquidated damages, if any, will be charged against the Vendor. Should the new price be less, the Vendor shall have no claim to the difference, but the liquidated damages will not be charges against Vendor.

(b) Beyond Vendor's Control—When, due to causes beyond his control, the Vendor fails to make delivery, or delivery is rejected, the Superintendent may allow additional time or he may obtain the supplies elsewhere without liability on the part of the Vendor to the Board or the Board to the Vendor.

(c) Rejected Merchandise—The Board may withhold acceptance or reject any goods which are found, upon examination, not to meet the specification requirements. Upon written notification of rejection, goods shall be removed within 5 days by the Vendor. Rejected goods left longer than thirty (30) days will be regarded as abandoned and the Board shall have the right to dispose of them as its own property. On foodstuffs and drugs a written notice of rejection need be given. Upon verbal notice from the Contractor to do so, the Vendor shall immediately remove and replace rejected merchandise, except as stated in §(a) herein.

*Plaintiff's Exhibit 4, Bid Form for $5,000 or Less.*

7—Governmental Regulations—The Vendor expressly undertakes and agrees to fully comply with any and all laws, orders or regulations of any federal, state, or municipal authority or agency insofar as any of the same may affect the execution of this order, and to promptly notify the Superintendent in writing of any such order, regulation, or law, that may be promulgated at any time during the course of the execution of this order that affects the execution of the order. If governmental regulations or other conditions beyond the Vendor's control prevent his compliance with any requirements of the order, specific approval must be obtained from the Superintendent before substitutes may be delivered. If proper substitutes are not available, the order may be cancelled without liability to the Board or to the Vendor.

8—Assignments—No assignment of order will be valid without the written consent of the Superintendent.

9—Limitation of Action—No action for any cause whatsoever arising out of this order shall be maintained against the Board by the Vendor, or anyone claiming under the Vendor, unless such action shall be commenced within six months.

(a) after expiration of this order or

(b) after the date of written notice to the Vendor from the Board of complete rejection or withheld acceptance or

(c) after the date of written notice to the Vendor from the Board of a deduction from the agreed price on the order.

whichever of the above events shall be the latest in time.

*Plaintiff's Exhibit 4, Bid Form for $5,000 or Less.*

10—Patents—The Vendor shall be liable for all claims made against the Board or any officer thereof for infringement of patent rights or other rights arising from the purchase or use of supplies delivered under the order, and shall save harmless and indemnify the Board, and any officer thereof, against all costs, expenses, and damages which it or he may incur by reason of such infringement and the Board shall deduct and retain out of any moneys which may be due, or become due, to the Vendor, a sum sufficient to meet all claims arising from such infringements.

11—Sales and Excise Taxes—The City of New York and the Board of Education are exempt from the payment of any City and State Sales or Federal Excise Taxes.

12—Payment and Collection of Charges—Invoices will be payable after proper delivery of merchandise.

Follow instructions for billing as indicated on official orders.

All sums due the Board shall be deducted from current obligations that are due or may become due. In the event that collection is not made in this manner, the Vendor shall pay to the Board, on demand, the amount of such charges.

13—Union Label—Unless otherwise specified, all printing in this contract except envelopes, must be done in a printing plant located within the City of New York. The union label must appear on all of the forms, required under this contract, except letterheads, noteheads and envelopes.

14—Warranties and Guarantees—The Vendor shall obtain all manufacturers' Warranties and Guarantees of all equipment and materials required by this bid and any resultant orders in the name of the Board of Education, New York City and shall deliver same to the point of delivery.

*Plaintiff's Exhibit 4, Bid Form for $5,000 or Less.*

15—Code of Ethics—In accordance with policy adopted by the Board of Education, any contract, agreement or order issued as a result of this bid is authorized subject to the provisions of the Administrative Code and the City Charter relating to a Code of Ethics and to the policies of the city Board of Education relating to conflicts of interest. In the event that the Vendor is, employs, retains, or engages the services of any employee of the Board of Education or former employee of the Board of Education in violation of the provisions of the Administrative Code or the City Charter relating to a Code of Ethics or of the policies of the city Board relating to conflicts of interest, the Vendor shall have no claim in law and/or equity under the agreement nor shall the Vendor have any claim in law and/or equity against the Board of Education or any Board of Education agent, servant or employee.

16—No Discrimination—It is agreed between the parties hereto as follows:

As required by New York State Labor Law No. 220-E:

(1) That in the hiring of employees for the performance of work under this bid and any resultant order or any subcontract hereunder, neither the Vendor, Subcontractor, nor any person acting on behalf of such Vendor or Subcontractor, shall by reason of race, creed, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates:

(2) That neither the Vendor, Subcontractor, nor any person on his behalf shall, in any manner discriminate against or intimidate any employee hired for the performance of work on account of race, creed, color, or national origin:

*Plaintiff's Exhibit 4, Bid Form for $5,000 or Less.*

(3) That there may be deducted from the amount payable to the Vendor by the City under bid and any resultant order a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of this provision, and

(4) That any order may be cancelled or terminated by the City and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this Section No. 16.

(5) The aforesaid provisions of this section covering every order for or on behalf of the state or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

17—Workmen's Compensation—If this bid and any resultant order be of such character that the employees engaged thereon are required to be insured by the provisions of Chapter 615 of the laws of 1922, known as the Workmen's Compensation Law, and with acts amendatory thereof, the same shall be void and of no effect unless the person, firm or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of the bid and any resultant order such employees in compliance with the provisions of said law.

18—Labor Law—The Vendor agrees that he will comply with all of the applicable provisions of "The State Labor Law."

**Plaintiff's Exhibit 5, Memorandum Regarding City Policy.**

NEW YORK CITY
HEALTH AND HOSPITALS CORPORATION
125 WORTH STREET, NEW YORK, N.Y. 10013

3 December 1971

MEMORANDUM

To: Executive Directors
Directors of Purchase

THROUGH: Management Review Committee

FROM: Asst. Sr. Vice President, Finance (Brady/Katz) Director-Procurement

SUBJECT: Union Label—HHC Printing

Referencing above subject, the Health and Hospitals Corporation will follow the procedure established by the New York City Department of Purchase in which letterpress or offset printing and all accessory operations as required will be done in a union printing plant located within the City of New York. The union label must appear on all printing except letterheads and noteheads.

This policy applies to the hospitals as well as Central Office procurement.

JB/LK/m

**Plaintiff's Exhibit 6, Bid Invitation to House of Lithography.**

COMMUNITY SCHOOL DISTRICT 24
ANTHONY J. SANFILIPPO, Community Superintendent

DAVID WILNER
Supervising Principal

HERBERT GALLUS
Business Manager

VIRGINIA MORRISSEY
Executive Assistant

MICHAELA J. VILHOTTI
Director of Curriculum

CERTIFIED—RETURN RECEIPT REQUESTED

December 19, 1975

House of Lithography, Inc.
24-08 Jackson Avenue
Long Island City, New York 11201

Gentlemen:

Your bid is invited on the following printed material required by this District.

| | | |
|---|---|---|
| Description: | Eight (8) mathematics tests and Eight (8) profile sheets | |
| Quantity: | Various—See Page 2. | |
| Number of Pages: | Various—See Page 3. | |
| Size: | Binding Sheets: | 1¾″ x 16″<br>8½″ x 11″ |
| Stock: | Offset White | |
| Ink: | Black | |
| Copy: | (Illegible) | |
| Binding: | | |

*Plaintiff's Exhibit 6, Bid Invitation to House of Lithography.*

| | | | |
|---|---|---|---|
| Packing & Delivery: | Tests for EACH grade, bundled in sets of 40, in labeled cartons. Profile sheets packed flat. One point delivery. | | |
| Page & Quantity Summary: | Grade One | 12 Pages | 2800 copies |
| | Grade Two | 12 Pages | 2800 copies |
| | Grade Three | 15 Pages | 2700 copies |
| | Grade Four | 16 Pages | 2800 copies |
| | Grade Five | 16 Pages | 2800 copies |
| | Grade Six | 15 Pages | 2700 copies |
| | Grade Seven | 14 Pages | 3000 copies |
| | Grade Eight | 16 Pages | 2100 copies |
| | Eight (8) Profile Sheets each | | 200 copies |
| Delivery: | No later than Monday, January 26, 1976 to District Office, Room 112. | | |
| Legal Requirement: | Printing must done by Union Shop and union label affixed to printed matter. | | |

Your bid, addressed to the Business Manager, Room 112A, must be received on or before Tuesday, January 6, 1976.
Sincerely yours,

Herbert Gallus
Business Manager

---

**Defendants' Exhibit F, Printer's League Contract.**

(See opposite ☞)

(61565)

# LOCAL 51—PRINTERS LEAGUE
# CONTRACT
# 1975-1977

SHOP RULES AND WAGE SCALES

# CONTRACT

for

## Book and Job Offices

between

Printers League Section
PRINTING INDUSTRIES
OF METROPOLITAN NEW YORK, INC.

and

N. Y. Printing Pressmen and
Offset Workers' Union No. 51
I.P. & G.C.U.

1975-1977

Print New York

36

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## PRINTERS LEAGUE - N. Y. PRINTING PRESSMEN'S UNION No. 51

### Journeymen Wage Scales

### Effective Shifts Worked on or after March 4, 1975

| CYLINDER AND SHEET-FED ROTARY PRESSES | DAY SHIFT | | | NIGHT SHIFT | | | THIRD SHIFT | |
|---|---|---|---|---|---|---|---|---|
| | Weekly | Hourly Mon. to Thurs. | Hourly Friday | Weekly | Hourly Mon. to Thurs. | Hourly Friday | Weekly | Hourly |
| One cylinder, over 68 in. | $313.87 | $ 8.9677 | $ 9.6575 | $335.84 | 9.5954 | $10.3335 | $342.12 | $10.9478 |
| One or two cylinders, not over 68 in. | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Two cylinder presses, both on color register work | 316.61 | 9.0460 | 9.7418 | 338.77 | 9.6791 | 10.4237 | 345.10 | 11.0432 |
| One poster press | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| One label press (color register work) | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| One press with bronzing machine | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| One perfecting press | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| One perfecting press on color register work | 316.61 | 9.0460 | 9.7418 | 338.77 | 9.6791 | 10.4237 | 345.10 | 11.0432 |
| One two-color flat bed | 316.61 | 9.0460 | 9.7418 | 338.77 | 9.6791 | 10.4237 | 345.10 | 11.0432 |
| One two-color flat bed (over 70 in.) | 319.40 | 9.1257 | 9.8277 | 341.76 | 9.7646 | 10.5157 | 348.15 | 11.1408 |
| One two-color Harris (28 x 34 and up) | 316.61 | 9.0460 | 9.7418 | 338.77 | 9.6791 | 10.4237 | 345.10 | 11.0432 |
| One sheet-fed rotary | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| One sheet-fed rotary on color register work | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| One sheet-feed rotary with color attachments | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| One two-color sheet-fed rotary | 319.40 | 9.1257 | 9.8277 | 341.76 | 9.7646 | 10.5157 | 348.15 | 11.1408 |
| Double sheet-fed rotary | 319.40 | 9.1257 | 9.8277 | 341.76 | 9.7646 | 10.5157 | 348.15 | 11.1408 |
| Three-color Sterling | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Four-color Sterling | 322.23 | 9.2066 | 9.9148 | 344.79 | 9.8511 | 10.6089 | 351.23 | 11.2394 |
| McKee process press | 322.23 | 9.2066 | 9.9148 | 344.79 | 9.8511 | 10.6089 | 351.23 | 11.2394 |
| Large McKee process press | 330.77 | 9.4506 | 10.1775 | 353.92 | 10.1120 | 10.8898 | 360.54 | 11.5373 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Presses with wax attachment, when in operation, weekly extra | 1.50 | | | 1.50 | | | 1.50 | |
| Permanent provers (men employed on no other than proving work) on cylinder or color work | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| Pressmen making matrices for McKee process plates | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |

## SINGLE COLOR AUTOMATIC UNIT CYLINDER PRESSES

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Miehle Vertical | $313.87 | $ 8.9677 | $ 9.6575 | $335.84 | $ 9.5954 | $10.3335 | $342.12 | $10.9478 |
| Miehle Horizontal | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Miehle auto pony | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| Miehle No. 4 — 2 roller | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| Miehle No. 4 — 3 roller | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| Miehle No. 4 — 4 roller | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| Miehle No. 41 | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| Miller High Speed | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Miller Simplex | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Miller Major Simplex | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| Kelly A | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Kelly B | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Kelly automatic jobber | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Kelly C | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Kelly No. 1 | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Kelly No. 2 | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| Babcock 3/5 auto | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| Babcock auto 4/3 | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| Babcock No. 5 auto | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Harris 1C | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Premier No. GF | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |

## TWO-COLOR AUTOMATIC UNIT CYLINDER PRESSES

| (When Operated Without an Assistant) | DAY SHIFT Weekly | DAY SHIFT Hourly Mon. to Thurs. | DAY SHIFT Hourly Friday | NIGHT SHIFT Weekly | NIGHT SHIFT Hourly Mon. to Thurs. | NIGHT SHIFT Hourly Friday | THIRD SHIFT Weekly | THIRD SHIFT Hourly |
|---|---|---|---|---|---|---|---|---|
| Miehle horizontal tandem | $317.99 | $ 9.0854 | $ 9.7843 | $340.25 | $ 9.7214 | $10.4692 | $346.61 | $11.0915 |
| Miehle No. 41 — 2 color | 320.86 | 9.1674 | 9.8726 | 343.32 | 9.8091 | 10.5637 | 349.74 | 11.1917 |
| Miehle No. 46 — 2 color | 320.86 | 9.1674 | 9.8726 | 343.32 | 9.8091 | 10.5637 | 349.74 | 11.1917 |
| Harris H. K. | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| Miller 2-color Simplex | 320.86 | 9.1674 | 9.8726 | 343.32 | 9.8091 | 10.5637 | 349.74 | 11.1917 |
| Miller 2-color Simplex and Miehle 41 in. 2-color when operated with an assistant | 316.61 | 9.0460 | 9.7418 | 338.77 | 9.6791 | 10.4237 | 345.10 | 11.0432 |

## WEB PRESSES

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Single-roll web press, 46 in. or under | $322.23 | $ 9.2066 | $ 9.9148 | $344.79 | $ 9.8511 | $10.6089 | $351.23 | $11.2395 |
| Single-roll web press, over 46 in. | 325.09 | 9.2883 | 10.0028 | 347.85 | 9.9386 | 10.7031 | 354.35 | 11.3392 |
| Double-roll web press, 46 in. or under (man in charge) | 322.23 | 9.2066 | 9.9148 | 344.79 | 9.8511 | 10.6089 | 351.23 | 11.2395 |
| Double-roll web press, over 46 in. (man in charge) | 325.09 | 9.2883 | 10.0028 | 347.85 | 9.9386 | 10.7031 | 354.35 | 11.3392 |
| Three- or four-color or process, 46 in. (man in charge) | 325.09 | 9.2883 | 10.0028 | 347.85 | 9.9386 | 10.7031 | 354.35 | 11.3392 |
| Three- or four-color or process, over 46 in. (man in charge) | 327.92 | 9.3691 | 10.0898 | 350.87 | 10.0249 | 10.7960 | 357.43 | 11.4378 |
| Second man on web press (as provided in Section 80) | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Cox-duplex press | 316.61 | 9.0460 | 9.7418 | 338.77 | 9.6791 | 10.4237 | 345.10 | 11.0432 |
| Cox-duplex second man (when employed) | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Multi-web ticket press | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Brakeman pressmen | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Tension men pressmen | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |

Web presses with color attachments, when in operation, $1.00 over scale for man in charge.

Web presses with insert feeders, wire stitchers or pasters, $1.00 weekly extra for each attachment in operation for both first and second man.

## FOREMEN AND ASSISTANT FOREMEN

Foremen shall receive at least $5.00 per week more than the highest basic scale for any press under their supervision up to and including 5 presses — $1.00 for each additional press up to and including 15 presses.

Assistant foremen shall receive, as a differential, one-half of the differential scale for foremen.

## PLATEN PRESSES

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1 to 3 platen presses | $279.27 | $ 7.9791 | $ 8.5929 | $298.82 | $ 8.5377 | $ 9.1945 | $304.40 | $ 9.7408 |
| 4 platen presses | 282.07 | 8.0591 | 8.6791 | 301.81 | 8.6231 | 9.2865 | 307.46 | 9.8387 |
| 1 automatic platen press 20 in. or under | 279.27 | 7.9791 | 8.5929 | 298.82 | 8.5377 | 9.1945 | 304.40 | 9.7408 |
| 1 automatic platen press over 20 in. | 280.63 | 8.0180 | 8.6348 | 300.27 | 8.5791 | 9.2391 | 305.89 | 9.7885 |
| 1 automatic and 1 or 2 hand-fed platens | 282.07 | 8.0591 | 8.6791 | 301.81 | 8.6231 | 9.2865 | 307.46 | 9.8387 |
| 2 automatic platen presses, 20 in. or under | 282.07 | 8.0591 | 8.6791 | 301.81 | 8.6231 | 9.2865 | 307.46 | 9.8387 |
| 2 automatic platen presses over 20 in. | 284.89 | 8.1397 | 8.7658 | 304.83 | 8.7094 | 9.3794 | 310.53 | 9.9370 |
| 1 C & P Press, 12″ x 18″ | 279.27 | 7.9791 | 8.5929 | 298.82 | 8.5377 | 9.1945 | 304.40 | 9.7408 |
| 2 C & P Presses, 12″ x 18″ | 282.07 | 8.0591 | 8.6791 | 301.81 | 8.6231 | 9.2865 | 307.46 | 9.8387 |
| 1 Webendorfer | 279.27 | 7.9791 | 8.5929 | 298.82 | 8.5377 | 9.1945 | 304.40 | 9.7408 |
| 2 Webendorfers | 282.07 | 8.0591 | 8.6791 | 301.81 | 8.6231 | 9.2865 | 307.46 | 9.8387 |
| 2 Multi-color presses | 279.27 | 7.9791 | 8.5929 | 298.82 | 8.5377 | 9.1945 | 304.40 | 9.7408 |
| Platen provers: men employed on no other than proving work (except galley or press proofs) | 288.26 | 8.2360 | 8.8695 | 308.44 | 8.8126 | 9.4905 | 314.20 | 10.0544 |
| 1 two-color Harris 15″ x 18″ | 284.89 | 8.1397 | 8.7658 | 304.83 | 8.7094 | 9.3794 | 310.53 | 9.9370 |
| 2 two-color Harris 15″ x 18″ | 287.75 | 8.2214 | 8.8538 | 307.89 | 8.7969 | 9.4735 | 313.65 | 10.0368 |
| 1 two-color Harris 18″ x 22″ | 284.89 | 8.1397 | 8.7658 | 304.83 | 8.7094 | 9.3794 | 310.53 | 9.9370 |
| 2 one-color Harris 15″ x 18″ or 18″ by 22″ | 284.89 | 8.1397 | 8.7658 | 304.83 | 8.7094 | 9.3794 | 310.53 | 9.9370 |

| COMBINATION | DAY SHIFT Weekly | DAY SHIFT Hourly Mon. to Thurs. | DAY SHIFT Hourly Friday | NIGHT SHIFT Weekly | NIGHT SHIFT Hourly Mon. to Thurs. | NIGHT SHIFT Hourly Friday | THIRD SHIFT Weekly | THIRD SHIFT Hourly |
|---|---|---|---|---|---|---|---|---|
| 1 cylinder and 1 or 2 hand-fed platens | $313.87 | $ 8.9677 | $ 9.6575 | $335.84 | $ 9.5954 | $10.3335 | $342.12 | $10.9478 |
| 1 cylinder and 1 automatic platen | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| 1 cylinder and 1 automatic job cylinder up to and including 31″ | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |

## JOB FOREMEN AND ASSISTANT FOREMEN

Job foremen shall receive at least $5.00 per week more than the highest basic scale for any press under their supervision, up to and including 15 presses — fifty cents for each additional press up to and including 15 more presses. Assistant job foremen shall receive, as a differential, one-half of the differential scale for foremen.



## COLOR ROTARY PRESSES
(Such as Cottrell and Miehle)

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1 two-color 29″ x 42″ | $319.40 | $ 9.1257 | $ 9.8277 | $341.76 | $ 9.7646 | $10.5157 | $348.15 | $11.1408 |
| 1 two-color 36″ x 48″ | 319.40 | 9.1257 | 9.8277 | 341.76 | 9.7646 | 10.5157 | 348.15 | 11.1408 |
| 1 two-color 40″ x 59″ | 321.18 | 9.1766 | 9.8825 | 343.66 | 9.8189 | 10.5742 | 350.09 | 11.2029 |
| 1 two-color over 59″ | 322.96 | 9.2274 | 9.9372 | 345.57 | 9.8734 | 10.6329 | 352.03 | 11.2650 |
| 1 five-color 29″ x 42″ | 323.91 | 9.2546 | 9.9665 | 346.58 | 9.9023 | 10.6640 | 353.06 | 11.2979 |
| 1 five-color 40″ x 59″ | 325.64 | 9.3040 | 10.0197 | 348.43 | 9.9551 | 10.7209 | 354.95 | 11.3584 |
| 1 five-color 50″ x 65″ | 327.03 | 9.3437 | 10.0625 | 349.92 | 9.9977 | 10.7668 | 356.46 | 11.4067 |
| 1 five-color 50″ x 72″ | 330.82 | 9.4520 | 10.1791 | 353.98 | 10.1137 | 10.8917 | 360.59 | 11.5389 |
| 1 five-color over 72″ | 336.64 | 9.6183 | 10.3582 | 360.20 | 10.2914 | 11.0831 | 366.94 | 11.7421 |

## OFFSET PRESSES

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Duplicators, Multiliths and Small Offset Presses (all press sizes refer to the larger dimensions of the maximum size of the sheet:** | | | | | | | | |
| *15″ and Under: | | | | | | | | |
| 1 cyl. press ass't for one | | | | | | | | |
| 1 pressman (job) for two | $279.27 | $ 7.9791 | $ 8.5929 | $298.82 | $ 8.5377 | $ 9.1945 | $304.40 | $ 9.7408 |
| *Where above presses have two heads, or color cylinders, 1 pressman (job) for one | 279.27 | 7.9791 | 8.5929 | 298.82 | 8.5377 | 9.1945 | 304.40 | 9.7408 |
| **16″ up to and including 20″: | | | | | | | | |
| Multi-printing front and back with one T51 head and numbering unit | 328.10 | 9.3743 | 10.0954 | 351.07 | 10.0306 | 10.8022 | 357.63 | 11.4442 |
| 1 pressman (job) for one | 279.27 | 7.9791 | 8.5929 | 298.82 | 8.5377 | 9.1945 | 304.40 | 9.7408 |
| 1 pressman (cylinder) for two | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| **Where above presses have two heads or color cylinders, 1 pressman (cylinder) for one | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Single color offset presses: | | | | | | | | |
| Over 20″ up to and including 45″ | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Over 45″ | 317.99 | 9.0854 | 9.7843 | 340.25 | 9.7214 | 10.4692 | 346.61 | 11.0915 |
| Two-color offset presses: | | | | | | | | |
| Up to and including 45″ | 319.48 | 9.1280 | 9.8302 | 341.84 | 9.7669 | 10.5182 | 348.23 | 11.1434 |
| 46″ up to and including 60″ | 324.16 | 9.2617 | 9.9742 | 346.85 | 9.9100 | 10.6723 | 353.33 | 11.3066 |
| 61″ up to and including 72″ | 328.83 | 9.3951 | 10.1178 | 351.85 | 10.0529 | 10.8262 | 358.42 | 11.4694 |
| 73″ and over | 333.53 | 9.5294 | 10.2625 | 356.88 | 10.1966 | 10.9809 | 363.55 | 11.6336 |
| Four-color offset presses: | | | | | | | | |
| Up to and including 50″ | 336.64 | 9.6183 | 10.3582 | 360.20 | 10.2914 | 11.0831 | 366.94 | 11.7421 |

| Four-color offset presses continued: | DAY SHIFT Weekly | DAY SHIFT Hourly Mon. to Thurs. | DAY SHIFT Hourly Friday | NIGHT SHIFT Weekly | NIGHT SHIFT Hourly Mon. to Thurs. | NIGHT SHIFT Hourly Friday | THIRD SHIFT Weekly | THIRD SHIFT Hourly |
|---|---|---|---|---|---|---|---|---|
| 51″ up to and including 61″ | | | | | | | | |
| 1st pressman | 341.32 | 9.7520 | 10.5022 | 365.21 | 10.4346 | 11.2372 | 372.04 | 11.9053 |
| 2nd pressman | 321.04 | 9.1726 | 9.8782 | 343.51 | 9.8146 | 10.5695 | 349.93 | 11.1978 |
| 62″ and over: | | | | | | | | |
| 1st pressman | 346.00 | 9.8857 | 10.6462 | 370.22 | 10.5777 | 11.3914 | 377.14 | 12.0685 |
| 2nd pressman | 321.04 | 9.1726 | 9.8782 | 343.51 | 9.8146 | 10.5695 | 349.93 | 11.1978 |

## WEB OFFSET PRESSES

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1-unit, 2 plate cylinders, web width, 18″ up to and including 38½″, pressman | $322.23 | $ 9.2066 | $ 9.9148 | $344.79 | $ 9.8511 | $10.6089 | $351.23 | $11.2394 |
| web width, 39″ up to and including 55″, pressman | 325.09 | 9.2883 | 10.0028 | 347.85 | 9.9386 | 10.7031 | 354.35 | 11.3392 |
| 2-unit, 4 plate cylinders, web width, 18″ up to and including 38½″, pressman | 325.34 | 9.2954 | 10.0105 | 348.11 | 9.9460 | 10.7111 | 354.62 | 11.3478 |
| web width, 39″ up to and including 55″, pressman | 333.53 | 9.5294 | 10.2625 | 356.88 | 10.1966 | 10.9809 | 363.55 | 11.6336 |
| 3-unit, 6 plate cylinders, web width, 18″ to and including 38½″, | | | | | | | | |
| 1st pressman | 325.73 | 9.3066 | 10.0225 | 348.53 | 9.9580 | 10.7240 | 355.05 | 11.3616 |
| 2nd pressman | 317.91 | 9.0831 | 9.7818 | 340.16 | 9.7189 | 10.4665 | 346.52 | 11.0886 |
| web width 39″ up to and including 55″, | | | | | | | | |
| 1st pressman | 333.53 | 9.5294 | 10.2625 | 356.88 | 10.1966 | 10.9809 | 363.55 | 11.6336 |
| 2nd pressman | 321.04 | 9.1726 | 9.8782 | 343.51 | 9.8146 | 10.5695 | 349.93 | 11.1978 |
| 4-unit, 8 plate cylinders, web width, 18″ up to and including 38½″ | | | | | | | | |
| 1st pressman | 333.53 | 9.5294 | 10.2625 | 356.88 | 10.1966 | 10.9809 | 363.55 | 11.6336 |
| 2nd pressman | 319.48 | 9.1280 | 9.8302 | 341.84 | 9.7669 | 10.5182 | 348.23 | 11.1434 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| web width 39″ up to and including 55″, | | | | | | | | |
| 1st pressman | 341.32 | 9.7520 | 10.5022 | 365.21 | 10.4346 | 11.2372 | 372.04 | 11.9053 |
| 2nd pressman | 322.59 | 9.2169 | 9.9258 | 345.17 | 9.8620 | 10.6206 | 351.62 | 11.2518 |
| 5-unit, 10 plate cylinders, web width, 31″ up to and including 38½″, | | | | | | | | |
| 1st pressman | 336.64 | 9.6183 | 10.3582 | 360.20 | 10.2914 | 11.0831 | 366.94 | 11.7421 |
| 2nd pressman | 317.91 | 9.0831 | 9.7818 | 340.16 | 9.7189 | 10.4665 | 346.52 | 11.0886 |
| 3rd pressman (job) | 279.27 | 7.9791 | 8.5929 | 298.82 | 8.5377 | 9.1945 | 304.40 | 9.7408 |

## * * PREPARATORY JOURNEYMEN

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Cameraman | $313.87 | $ 8.9677 | $ 9.6575 | $335.84 | $ 9.5954 | $10.3335 | $342.12 | $10.9478 |
| Cameraman, color separation | 318.46 | 9.0989 | 9.7988 | 340.75 | 9.7357 | 10.4846 | 347.12 | 11.1078 |
| Cameraman, 4/c process separation | 333.53 | 9.5294 | 10.2625 | 356.88 | 10.1966 | 10.9809 | 363.55 | 11.6336 |
| Stripper | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Stripper, color | 318.46 | 9.0989 | 9.7988 | 340.75 | 9.7357 | 10.4846 | 347.12 | 11.1078 |
| Stripper, 4/c process | 323.12 | 9.2320 | 9.9422 | 345.74 | 9.8783 | 10.6382 | 352.20 | 11.2704 |
| Platemaker, all except deep etch | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 342.12 | 10.9478 |
| Platemaker, deep etch | 318.46 | 9.0989 | 9.7988 | 340.75 | 9.7357 | 10.4846 | 347.12 | 11.1078 |

** When a black and white cameraman, platemaker or stripper is assigned to color separation, deep etch or 4/c process work, he shall be paid the higher scale for the period so assigned. The higher scale shall not apply for such work where it is experimental or the journeyman is being trained on the more skilled process.

## APPRENTICE WAGE SCALES

## PRINTERS LEAGUE - N. Y. PRINTING PRESSMEN'S UNION No. 51

**Effective Shifts Worked on or after March 4, 1975**

| | DAY SHIFT | | | NIGHT SHIFT | | | VACATION CREDIT Effective 4/1/75 | |
|---|---|---|---|---|---|---|---|---|
| **APPRENTICE JOB PRESSMEN** | Weekly | Hourly Mon. to Thurs. | Hourly Friday | Weekly | Hourly Mon. to Thurs. | Hourly Friday | Day | Night |
| 1st year — Scale of Job Press Assistant | *$225.33 | $ 6.4380 | $ 6.9332 | $241.10 | $ 6.8886 | $ 7.4185 | $4.15 | $4.44 |
| 2nd year — 25% of the difference of the Scale of the Job Press Assistant and the Scale of the Job Pressman | 238.82 | 6.8234 | 7.3483 | 255.54 | 7.3011 | 7.8628 | 4.34 | 4.65 |
| 3rd year — 50% of the above difference | 252.30 | 7.2086 | 7.7631 | 269.96 | 7.7131 | 8.3065 | 4.59 | 4.91 |
| 4th year — 75% of the above difference | 265.79 | 7.5940 | 8.1782 | 284.40 | 8.1257 | 8.7508 | 4.83 | 5.17 |
| Thereafter, full Job Pressman Scale | 279.27 | 7.9791 | 8.5929 | 298.82 | 8.5377 | 9.1945 | 5.57 | 5.96 |
| **APPRENTICE CYLINDER PRESSMEN AND/OR APPRENTICE OFFSET PREPARATORY DEPARTMENTS** | | | | | | | | |
| 1st year — scale of Job Pressman | $279.27 | $ 7.9791 | $ 8.5929 | $298.82 | $ 8.5377 | $ 9.1945 | $5.57 | $5.96 |
| 2nd year — 25% of the difference of the Scale of the Job Pressman and the Scale of the Cylinder Pressman | 287.92 | 8.2263 | 8.8591 | 308.07 | 8.8020 | 9.4791 | 5.73 | 6.13 |
| 3rd year — 50% of the above difference | 296.57 | 8.4734 | 9.1252 | 317.33 | 9.0666 | 9.7640 | 5.89 | 6.30 |
| 4th year — 75% of the above difference | 305.22 | 8.7206 | 9.3914 | 326.59 | 9.3311 | 10.0489 | 6.05 | 6.47 |
| Thereafter, full Cylinder Pressman Scale | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 6.20 | 6.64 |

## APPRENTICE WEB AND/OR MULTI COLOR PRESSMEN

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1st year — Scale of Cylinder Assistant | *$267.77 | $ 7.6506 | $ 8.2391 | $286.51 | $ 8.1860 | $ 8.8157 | $4.93 | $5.28 |
| 2nd year — 25% of the difference of the Scale of the Cylinder Assistant and the Scale of a Web Pressman | 281.39 | 8.0397 | 8.6582 | 301.09 | 8.6026 | 9.2643 | 5.12 | 5.47 |
| 3rd year — 50% of the above diffeernce | 295.00 | 8.4286 | 9.0769 | 315.65 | 9.0185 | 9.7123 | 5.36 | 5.74 |
| 4th year — 75% of the above difference | 308.62 | 8.8177 | 9.4960 | 330.22 | 9.4349 | 10.1606 | 5.61 | 6.00 |
| Thereafter, full Web Pressman Scale | 322.23 | 9.2066 | 9.9148 | 344.79 | 9.8511 | 10.6089 | 6.35 | 6.80 |

*This rate will be subject to change as a result of the Printers League-Local 23 negotiations subsequent to May 1, 1975.

## ** APPRENTICE IN OFFSET PREPARATORY DEPARTMENTS

**Inexperienced employees with a minimum of one (1) year employment in a shop covered under the Printers League-Local 51 Contract.

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1st year | $164.74 | $ 4.7069 | $ 5.0689 | $176.27 | $ 5.0363 | $ 5.4237 | $3.31 | $3.54 |
| 2nd year — 25% of the difference of the $164.74 and the Cylinder Pressman scale | 202.02 | 5.7720 | 6.2160 | 216.16 | 6.1760 | 6.6511 | 4.03 | 4.32 |
| 3rd year — 50% of the above difference | 239.31 | 6.8374 | 7.3634 | 256.06 | 7.3160 | 7.8788 | 4.76 | 5.09 |
| 4th year — 75% of the above difference | 276.59 | 7.9026 | 8.5105 | 295.95 | 8.4557 | 9.1062 | 5.48 | 5.86 |
| Thereafter, full journeyman scale Prep Department | 313.87 | 8.9677 | 9.6575 | 335.84 | 9.5954 | 10.3335 | 6.20 | 6.63 |

## LOCAL No. 51
## JOURNEYMEN VACATION CREDITS
### Effective April 1, 1975

| Base Scales DAYS | Per Shift Vacation Credit | Base Scales NIGHTS | Per Shift Vacation Credit | Base Scales LOBSTER | Per Shift Vacation Credit |
|---|---|---|---|---|---|
| $279.27 | $5.57 | $298.82 | $5.96 | $304.40 | $6.08 |
| 280.63 | 5.60 | 300.27 | 5.99 | 305.89 | 6.10 |
| 282.07 | 5.62 | 301.81 | 6.02 | 307.46 | 6.13 |
| 284.89 | 5.68 | 304.83 | 6.07 | 310.53 | 6.19 |
| 287.75 | 5.73 | 307.89 | 6.13 | 313.65 | 6.24 |
| 288.26 | 5.74 | 308.44 | 6.14 | 314.20 | 6.25 |
| 313.87 | 6.20 | 335.84 | 6.64 | 342.13 | 6.76 |
| 316.61 | 6.25 | 338.77 | 6.69 | 345.10 | 6.82 |
| 317.91 | 6.28 | 340.16 | 6.72 | 346.52 | 6.84 |
| 317.99 | 6.28 | 340.25 | 6.72 | 346.61 | 6.84 |
| 318.46 | 6.29 | 340.75 | 6.73 | 347.12 | 6.85 |
| 319.40 | 6.30 | 341.76 | 6.74 | 348.15 | 6.87 |
| 319.48 | 6.30 | 341.84 | 6.75 | 348.23 | 6.87 |
| 320.86 | 6.33 | 343.32 | 6.77 | 349.74 | 6.90 |
| 321.04 | 6.33 | 343.51 | 6.78 | 349.93 | 6.90 |
| 321.18 | 6.34 | 343.66 | 6.78 | 350.09 | 6.91 |
| 322.23 | 6.35 | 344.79 | 6.80 | 351.23 | 6.93 |
| 322.59 | 6.36 | 345.17 | 6.81 | 351.62 | 6.93 |
| 322.96 | 6.37 | 345.57 | 6.81 | 352.03 | 6.94 |
| 323.12 | 6.37 | 345.74 | 6.82 | 352.20 | 6.94 |
| 323.91 | 6.39 | 346.58 | 6.83 | 353.06 | 6.96 |
| 324.16 | 6.39 | 346.85 | 6.84 | 353.33 | 6.96 |
| 325.09 | 6.41 | 347.85 | 6.86 | 354.35 | 6.98 |
| 325.34 | 6.41 | 348.11 | 6.86 | 354.62 | 6.99 |
| 325.64 | 6.42 | 348.43 | 6.87 | 354.95 | 6.99 |
| 325.73 | 6.42 | 348.53 | 6.87 | 355.05 | 7.00 |
| 327.03 | 6.44 | 349.92 | 6.89 | 356.46 | 7.02 |
| 327.92 | 6.46 | 350.87 | 6.91 | 357.43 | 7.04 |
| 328.10 | 6.46 | 351.07 | 6.91 | 357.63 | 7.04 |
| 328.83 | 6.47 | 351.85 | 6.93 | 358.42 | 7.06 |
| 330.77 | 6.51 | 353.92 | 6.97 | 360.54 | 7.10 |
| 330.82 | 6.51 | 353.98 | 6.97 | 360.59 | 7.10 |
| 333.53 | 6.56 | 356.88 | 7.02 | 363.55 | 7.15 |
| 336.64 | 6.62 | 360.20 | 7.08 | 366.94 | 7.21 |
| 341.32 | 6.70 | 365.21 | 7.17 | 372.04 | 7.30 |
| 346.00 | 6.79 | 370.22 | 7.26 | 377.14 | 7.40 |

## PRINTERS LEAGUE - N. Y. PRINTING PRESSMEN'S UNION No. 51

### Journeymen Wage Scales

### Effective Shifts Worked on or after March 4, 1976

| CYLINDER AND SHEET-FED ROTARY PRESSES | DAY SHIFT | | | NIGHT SHIFT | | | THIRD SHIFT | |
|---|---|---|---|---|---|---|---|---|
| | Weekly | Hourly Mon. to Thurs. | Hourly Friday | Weekly | Hourly Mon. to Thurs. | Hourly Friday | Weekly | Hourly |
| One cylinder, over 68 in. | $334.87 | $ 9.5677 | $10.3037 | $358.31 | $10.2374 | $11.0249 | $365.01 | $11.6803 |
| One or two cylinders, not over 68 in. | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Two cylinder presses, both on color register work | 337.61 | 9.6460 | 10.3880 | 361.24 | 10.3211 | 11.1151 | 367.99 | 11.7757 |
| One poster press | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| One label press (color register work) | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| One press with bronzing machine | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| One perfecting press | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| One perfecting press on color register work | 337.61 | 9.6460 | 10.3880 | 361.24 | 10.3211 | 11.1151 | 367.99 | 11.7757 |
| One two-color flat bed | 337.61 | 9.6460 | 10.3880 | 361.24 | 10.3211 | 11.1151 | 367.99 | 11.7757 |
| One two-color flat bed (over 70 in.) | 340.40 | 9.7257 | 10.4738 | 364.23 | 10.4066 | 11.2071 | 371.04 | 11.8733 |
| One two-color Harris (28 x 34 and up) | 337.61 | 9.6460 | 10.3880 | 361.24 | 10.3211 | 11.1151 | 367.99 | 11.7757 |
| One sheet-fed rotary | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| One sheet-fed rotary on color register work | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| One sheet-fed rotary with color attachments | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| One two-color sheet-fed rotary | 340.40 | 9.7257 | 10.4738 | 364.23 | 10.4066 | 11.2071 | 371.04 | 11.8733 |
| Double sheet-fed rotary | 340.40 | 9.7257 | 10.4738 | 364.23 | 10.4066 | 11.2071 | 371.04 | 11.8733 |
| Three-color Sterling | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Four-color Sterling | 343.23 | 9.8066 | 10.5609 | 367.26 | 10.4931 | 11.3003 | 374.12 | 11.9718 |
| McKee process press | 343.23 | 9.8066 | 10.5609 | 367.26 | 10.4931 | 11.3003 | 374.12 | 11.9718 |
| Large McKee process press | 351.77 | 10.0506 | 10.8237 | 376.39 | 10.7540 | 11.5812 | 383.43 | 12.2698 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Presses with wax attachment, when in operation, weekly extra | 1.50 | | | 1.50 | | | 1.50 | |
| Permanent provers (men employed on no other than proving work) on cylinder or color work | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| Pressmen making matrices for McKee process plates | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |

## SINGLE COLOR AUTOMATIC UNIT CYLINDER PRESSES

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Miehle Vertical | $334.87 | $ 9.5677 | $10.3037 | $358.31 | $10.2374 | $11.0249 | $365.01 | $11.6803 |
| Miehle Horizontal | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Miehle auto pony | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| Miehle No. 4 — 2 roller | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| Miehle No. 4 — 3 roller | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| Miehle No. 4 — 4 roller | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| Miehle No. 41 | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| Miller High Speed | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Miller Simplex | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Miller Major Simplex | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| Kelly A | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Kelly B | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Kelly automatic jobber | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Kelly C | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Kelly No. 1 | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| Kelly No. 2 | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| Babcock 3/5 auto | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| Babcock auto 4/3 | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Babcock No. 5 auto | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Harris 1C | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| Premier No. GF | | | | | | | | |

## TWO-COLOR AUTOMATIC UNIT CYLINDER PRESSES

| (When Operated Without an Assistant) | DAY SHIFT Weekly | DAY SHIFT Hourly Mon. to Thurs. | DAY SHIFT Hourly Friday | NIGHT SHIFT Weekly | NIGHT SHIFT Hourly Mon. to Thurs. | NIGHT SHIFT Hourly Friday | THIRD SHIFT Weekly | THIRD SHIFT Hourly |
|---|---|---|---|---|---|---|---|---|
| Miehle horizontal tandem | $338.99 | $ 9.6854 | $10.4305 | $362.72 | $10.3634 | $11.1606 | $369.50 | $11.8240 |
| Miehle No. 41 — 2 color | 341.86 | 9.7674 | 10.5188 | 365.79 | 10.4511 | 11.2551 | 372.63 | 11.9242 |
| Miehle No. 46 — 2 color | 341.86 | 9.7674 | 10.5188 | 365.79 | 10.4511 | 11.2551 | 372.63 | 11.9242 |
| Harris H. K. | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| Miller 2-color Simplex | 341.86 | 9.7674 | 10.5188 | 365.79 | 10.4511 | 11.2551 | 372.63 | 11.9242 |
| Miller 2-color Simplex and Miehle 41 in. 2-color when operated with an assistant | 337.61 | 9.6460 | 10.3880 | 361.24 | 10.3211 | 11.1151 | 367.99 | 11.7757 |

## WEB PRESSES

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Single-roll web press, 46 in. or under | $343.23 | $ 9.8066 | $10.5609 | $367.26 | $10.4931 | $11.30003 | $374.12 | $11.9718 |
| Single-roll web press, over 46 in. | 346.09 | 9.8883 | 10.6489 | 370.32 | 10.5806 | 11.3945 | 377.24 | 12.0717 |
| Double-roll web press, 46 in. or under (man in charge) | 343.23 | 9.8066 | 10.5609 | 367.26 | 10.4931 | 11.3003 | 374.12 | 11.9718 |
| Double-roll web press, over 46 in. (man in charge) | 346.09 | 9.8883 | 10.6489 | 370.32 | 10.5806 | 11.3945 | 377.24 | 12.0717 |
| Three- or four-color or process, 46 in. (man in charge) | 346.09 | 9.8883 | 10.6489 | 370.32 | 10.5806 | 11.3945 | 377.24 | 12.0717 |
| Three- or four-color or process, over 46 in. (man in charge) | 348.92 | 9.9691 | 10.7360 | 373.34 | 10.6669 | 11.4874 | 380.32 | 12.1702 |
| Second man on web press (as provided in Section 80) | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Cox-duplex press | 337.61 | 9.6460 | 10.3880 | 361.24 | 10.3211 | 11.1151 | 367.99 | 11.7757 |
| Cox-duplex second man (when employed) | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Multi-web ticket press | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Brakeman pressmen | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Tension men pressmen | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |

Web presses with color attachments, when in operation, $1.00 over scale for man in charge.

Web presses with insert feeders, wire stitchers or pasters, $1.00 weekly extra for each attachment in operation for both first and second man.

## FOREMEN AND ASSISTANT FOREMEN

Foremen shall receive at least $5.00 per week more than the highest basic scale for any press under their supervision up to and including 5 presses — $1.00 for each additional press up to and including 15 presses.

Assistant foremen shall receive, as a differential, one-half of the differential scale for foremen.

## PLATEN PRESSES

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1 to 3 platen presses | $300.27 | $ 8.5791 | $ 9.2391 | $321.29 | $ 9.1797 | $ 9.8858 | $327.29 | $10.4733 |
| 4 platen presses | 303.07 | 8.6591 | 9.3252 | 324.28 | 9.2651 | 9.9778 | 330.35 | 10.5712 |
| 1 automatic platen press 20 in. or under | 300.27 | 8.5791 | 9.2391 | 321.29 | 9.1797 | 9.8858 | 327.29 | 10.4733 |
| 1 automatic platen press over 20 in. | 301.63 | 8.6180 | 9.2809 | 322.74 | 9.2211 | 9.9305 | 328.79 | 10.5210 |
| 1 automatic and 1 or 2 hand-fed platens | 303.07 | 8.6591 | 9.3252 | 324.28 | 9.2651 | 9.9778 | 330.35 | 10.5712 |
| 2 automatic platen presses, 20 in. or under | 303.07 | 8.6591 | 9.3252 | 324.28 | 9.2651 | 9.9778 | 330.35 | 10.5712 |
| 2 automatic platen presses over 20 in. | 305.89 | 8.7397 | 9.4120 | 327.30 | 9.3514 | 10.0708 | 333.42 | 10.6694 |
| 1 C & P Press, 12″ x 18″ | 300.27 | 8.5791 | 9.2391 | 321.29 | 9.1797 | 9.8858 | 327.29 | 10.4733 |
| 2 C & P Presses, 12″ x 18″ | 303.07 | 8.6591 | 9.3252 | 324.28 | 9.2651 | 9.9778 | 330.35 | 10.5712 |
| 1 Webendorfer | 300.27 | 8.5791 | 9.2391 | 321.29 | 9.1797 | 9.8858 | 327.29 | 10.4733 |
| 2 Webendorfers | 303.07 | 8.6591 | 9.3252 | 324.28 | 9.2651 | 9.9778 | 330.35 | 10.5712 |
| 2 Multi-color presses | 300.27 | 8.5791 | 9.2391 | 321.29 | 9.1797 | 9.8858 | 327.29 | 10.4733 |
| Platen provers: men employed on no other than proving work (except galley or press proofs) | 309.26 | 8.8360 | 9.5157 | 330.91 | 9.4546 | 10.1818 | 337.09 | 10.7869 |
| 1 two-color Harris 15″ x 18″ | 305.89 | 8.7397 | 9.4120 | 327.30 | 9.3514 | 10.0708 | 333.42 | 10.6694 |
| 2 two-color Harris 15″ x 18″ | 308.75 | 8.8214 | 9.5000 | 330.36 | 9.4389 | 10.1649 | 336.54 | 10.7693 |
| 1 two-color Harris 18″ x 22″ | 305.89 | 8.7397 | 9.4120 | 327.30 | 9.3514 | 10.0708 | 333.42 | 10.6694 |
| 2 one-color Harris 15″ x 18″ or 18″ x 22″ | 305.89 | 8.7397 | 9.4120 | 327.30 | 9.3514 | 10.0708 | 333.42 | 10.6694 |

| COMBINATION | DAY SHIFT Weekly | DAY SHIFT Hourly Mon. to Thurs. | DAY SHIFT Hourly Friday | NIGHT SHIFT Weekly | NIGHT SHIFT Hourly Mon. to Thurs. | NIGHT SHIFT Hourly Friday | THIRD SHIFT Weekly | THIRD SHIFT Hourly |
|---|---|---|---|---|---|---|---|---|
| 1 cylinder and 1 or 2 hand-fed platens | $334.87 | $ 9.5677 | $10.3037 | $358.31 | $10.2374 | $11.0249 | $365.01 | $11.6803 |
| 1 cylinder and 1 automatic platen | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| 1 cylinder and 1 automatic job cylinder up to and including 31″ | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |

## JOB FOREMEN AND ASSISTANT FOREMEN

Job foremen shall receive at least $5.00 per week more than the highest basic scale for any press under their supervision, up to and including 15 presses — fifty cents for each additional press up to and including 15 more presses. Assistant job foremen shall receive, as a differential, one-half of the differential scale for foremen.



## COLOR ROTARY PRESSES
**(Such as Cottrell and Miehle)**

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1 two-color 29″ x 42″ | $340.40 | $ 9.7257 | $10.4738 | $364.23 | $10.4066 | $11.2071 | $371.04 | $11.8733 |
| 1 two-color 36″ x 48″ | 340.40 | 9.7257 | 10.4738 | 364.23 | 10.4066 | 11.2071 | 371.04 | 11.8733 |
| 1 two-color 40″ x 59″ | 342.18 | 9.7766 | 10.5286 | 366.13 | 10.4608 | 11.2655 | 372.98 | 11.9354 |
| 1 two-color over 59″ | 343.96 | 9.8274 | 10.5834 | 368.04 | 10.5154 | 11.3243 | 374.92 | 11.9974 |
| 1 five-color 29″ x 42″ | 344.91 | 9.8546 | 10.6126 | 369.05 | 10.5453 | 11.3554 | 375.95 | 12.0304 |
| 1 five-color 40″ x 59″ | 346.64 | 9.9040 | 10.6658 | 370.90 | 10.5971 | 11.4123 | 377.84 | 12.0909 |
| 1 five-color 50″ x 65″ | 348.03 | 9.9437 | 10.7086 | 372.39 | 10.6397 | 11.4581 | 379.35 | 12.1392 |
| 1 five-color 50″ x 72″ | 351.82 | 10.0520 | 10.8252 | 376.45 | 10.7557 | 11.5831 | 383.48 | 12.2714 |
| 1 five-color over 72″ | 357.64 | 10.2183 | 11.0043 | 382.67 | 10.9334 | 11.7745 | 389.83 | 12.4746 |

## OFFSET PRESSES

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Duplicators, Multiliths and Small Offset Presses (all press sizes refer to the larger dimensions of the maximum size of the sheet):** | | | | | | | | |
| *15″ and Under: | | | | | | | | |
| 1 cyl. press ass't for one | | | | | | | | |
| 1 pressman (job) for two | $300.27 | $ 8.5791 | $ 9.2391 | $321.29 | $ 9.1797 | $ 9.8858 | $327.29 | $10.4733 |
| *Where above presses have two heads, or color cylinders, 1 pressman (job) for one | 300.27 | 8.5791 | 9.2391 | 321.29 | 9.1797 | 9.8858 | 327.29 | 10.4733 |
| **16″ up to and including 20″: | | | | | | | | |
| Multi-printing front and back with one T51 head and numbering unit | 349.10 | 9.9743 | 10.7415 | 373.54 | 10.6726 | 11.4935 | 380.52 | 12.1766 |
| 1 pressman (job) for one | 300.27 | 8.5791 | 9.2391 | 321.29 | 9.1797 | 9.8858 | 327.29 | 10.4733 |
| 1 pressman (cylinder) for two | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| **Where above presses have two heads or color cylinder, 1 pressman (cylinder) for one | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Single color offset presses: | | | | | | | | |
| Over 20″ up to and including 45″ | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Over 45″ | 338.99 | 9.6854 | 10.4305 | 362.72 | 10.3634 | 11.1606 | 369.50 | 11.8240 |
| Two-color offset presses: | | | | | | | | |
| Up to and including 45″ | 340.48 | 9.7280 | 10.4763 | 364.31 | 10.4089 | 11.2095 | 371.12 | 11.8758 |
| 46″ up to and including 60″ | 345.16 | 9.8617 | 10.6203 | 369.32 | 10.5520 | 11.3637 | 376.22 | 12.0390 |
| 61″ up to and including 72″ | 349.83 | 9.9951 | 10.7640 | 374.32 | 10.6949 | 11.5175 | 381.31 | 12.2019 |
| 73″ and over | 354.53 | 10.1294 | 10.9086 | 379.35 | 10.8386 | 11.6723 | 386.44 | 12.3661 |
| Four-color offset presses: | | | | | | | | |
| Up to and including 50″ | 357.64 | 10.2183 | 11.0043 | 382.67 | 10.9334 | 11.7745 | 389.83 | 12.4746 |

| | DAY SHIFT | | | NIGHT SHIFT | | | THIRD SHIFT | |
|---|---|---|---|---|---|---|---|---|
| Four-color offset presses continued: | Weekly | Hourly Mon. to Thurs. | Hourly Friday | Weekly | Hourly Mon. to Thurs. | Hourly Friday | Weekly | Hourly |
| 51″ up to and including 61″ | | | | | | | | |
| 1st pressman | 362.32 | 10.3520 | 11.1483 | 387.68 | 11.0766 | 11.9286 | 394.93 | 12.6378 |
| 2nd pressman | 342.04 | 9.7726 | 10.5243 | 365.98 | 10.4566 | 11.2609 | 372.82 | 11.9302 |
| 62″ and over: | | | | | | | | |
| 1st pressman | 367.00 | 10.4857 | 11.2923 | 392.69 | 11.2197 | 12.0828 | 400.03 | 12.8010 |
| 2nd pressman | 342.04 | 9.7726 | 10.5243 | 365.98 | 10.4566 | 11.2609 | 372.82 | 11.9302 |

## WEB OFFSET PRESSES

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1-unit, 2 plate cylinders, web width, 18″ up to and including 38½″, pressman | $343.23 | $ 9.8066 | $10.5609 | $367.26 | $10.4931 | $11.3003 | $374.12 | $11.9718 |
| web width, 39″ up to and including 55″, pressman | 346.09 | 9.8883 | 10.6489 | 370.32 | 10.5806 | 11.3945 | 377.24 | 12.0717 |
| 2-unit, 4 plate cylinders, web width, 18″ up to and including 38½″, pressman | 346.34 | 9.8954 | 10.6566 | 370.58 | 10.5880 | 11.4025 | 377.51 | 12.0803 |
| web width, 39″ up to and including 55″, pressman | 354.53 | 10.1294 | 10.9086 | 379.35 | 10.8386 | 11.6723 | 386.44 | 12.3661 |
| 3-unit, 6 plate cylinders, web width, 18″ up to and including 38½″, | | | | | | | | |
| 1st pressman | 346.73 | 9.9066 | 10.6686 | 371.00 | 10.6000 | 11.4154 | 377.94 | 12.0941 |
| 2nd pressman | 338.91 | 9.6831 | 10.4280 | 362.63 | 10.3609 | 11.1578 | 369.41 | 11.8211 |
| web width, 39″ up to and including 55″, | | | | | | | | |
| 1st pressman | 354.53 | 10.1294 | 10.9086 | 379.35 | 10.8386 | 11.6723 | 386.44 | 12.3661 |
| 2nd pressman | 342.04 | 9.7726 | 10.5243 | 365.98 | 10.4566 | 11.2609 | 372.82 | 11.9302 |
| 4-unit, 8 plate cylinders, web width, 18″ up to and including 38½″, | | | | | | | | |
| 1st pressman | 354.53 | 10.1294 | 10.9086 | 379.35 | 10.8386 | 11.6723 | 386.44 | 12.3661 |
| 2nd pressman | 340.48 | 9.7280 | 10.4763 | 364.31 | 10.4089 | 11.2095 | 371.12 | 11.8758 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| web width, 39″ up to and including 55″, | | | | | | | | |
| 1st pressman | 362.32 | 10.3520 | 11.1483 | 387.68 | 11.0766 | 11.9286 | 394.93 | 12.6378 |
| 2nd pressman | 343.59 | 9.8169 | 10.5720 | 367.64 | 10.5040 | 11.3120 | 374.51 | 11.9843 |
| 5-unit, 10 plate cylinders, web width, 31″ up to and including 38½″, | | | | | | | | |
| 1st pressman | 357.64 | 10.2183 | 11.0043 | 382.67 | 10.9334 | 11.7745 | 389.83 | 12.4746 |
| 2nd pressman | 338.91 | 9.6831 | 10.4280 | 362.63 | 10.3609 | 11.1578 | 369.41 | 11.8211 |
| 3rd pressman (job) | 300.27 | 8.5791 | 9.2391 | 321.29 | 9.1797 | 9.8858 | 327.29 | 10.4733 |

*** * PREPARATORY JOURNEYMEN**

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Cameraman | $334.87 | $ 9.5677 | $10.3037 | $358.31 | $10.2374 | $11.0249 | $365.01 | $11.6803 |
| Cameraman, color separation | 339.46 | 9.6989 | 10.4449 | 363.22 | 10.3777 | 11.1760 | 370.01 | 11.8403 |
| Cameraman, 4/c process separation | 354.53 | 10.1294 | 10.9086 | 379.35 | 10.8386 | 11.6723 | 386.44 | 12.3661 |
| Stripper | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Stripper, color | 339.46 | 9.6989 | 10.4449 | 363.22 | 10.3777 | 11.1760 | 370.01 | 11.8403 |
| Stripper, 4/c process | 344.12 | 9.8320 | 10.5883 | 368.21 | 10.5203 | 11.3295 | 375.09 | 12.0029 |
| Platemaker, all except deep etch | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 365.01 | 11.6803 |
| Platemaker, deep etch | 339.46 | 9.6989 | 10.4449 | 363.22 | 10.3777 | 11.1760 | 370.01 | 11.8403 |

****When a black and white cameraman, platemaker or stripper is assigned to color separation, deep etch or 4/c process work, he shall be paid the higher scale for the period so assigned. The higher scale shall not apply for such work where it is experimental or the journeyman is being trained on the more skilled process.**

## APPRENTICE WAGE SCALES

## PRINTERS LEAGUE - N. Y. PRINTING PRESSMEN'S UNION No. 51

### Effective Shifts Worked on or after March 4, 1976

| APPRENTICE JOB PRESSMEN | DAY SHIFT Weekly | DAY SHIFT Hourly Mon. to Thurs. | DAY SHIFT Hourly Friday | NIGHT SHIFT Weekly | NIGHT SHIFT Hourly Mon. to Thurs. | NIGHT SHIFT Hourly Friday | VACATION CREDIT Effective 3/4/76 Day | VACATION CREDIT Effective 3/4/76 Night |
|---|---|---|---|---|---|---|---|---|
| 1st year — Scale of Job Press Assistant | *$225.33 | $ 6.4380 | $ 6.9332 | $241.10 | $ 6.8886 | $ 7.4185 | $4.15 | $4.44 |
| 2nd year — 25% of the difference of the Scale of the Job Press Assistant and the Scale of the Job Pressman | 244.07 | 6.9734 | 7.5098 | 261.15 | 7.4614 | 8.0354 | 4.44 | 4.75 |
| 3rd year — 50% of the above difference | 262.80 | 7.5086 | 8.0862 | 281.20 | 8.0343 | 8.6523 | 4.78 | 5.11 |
| 4th year — 75% of the above difference | 281.54 | 8.0440 | 8.6628 | 301.25 | 8.6071 | 9.2692 | 5.12 | 5.48 |
| Thereafter, full Job Pressman Scale | 300.27 | 8.5791 | 9.2391 | 321.29 | 9.1797 | 9.8858 | 5.57 | 5.96 |
| **APPRENTICE CYLINDER PRESSMEN AND/OR APPRENTICE OFFSET PREPARATORY DEPARTMENTS** | | | | | | | | |
| 1st year — scale of Job Pressman | $300.27 | $ 8.5791 | $ 9.2391 | $321.29 | $ 9.1797 | $ 9.8858 | $5.57 | $5.96 |
| 2nd year — 25% of the difference of the Scale of the Job Pressman and the Scale of the Cylinder Pressman | 308.92 | 8.8263 | 9.5052 | 330.54 | 9.4440 | 10.1705 | 5.73 | 6.13 |
| 3rd year — 50% of the above difference | 317.57 | 9.0734 | 9.7714 | 339.80 | 9.7086 | 10.4554 | 5.89 | 6.30 |
| 4th year — 75% of the above difference | 326.22 | 9.3206 | 10.0375 | 349.06 | 9.9731 | 10.7403 | 6.05 | 6.47 |
| Thereafter, full Cylinder Pressman Scale | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 6.20 | 6.64 |

## APPRENTICE WEB AND/OR MULTI COLOR PRESSMEN

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1st year — Scale of Cylinder Assistant | *$267.77 | $ 7.6506 | $ 8.2391 | $286.51 | $ 8.1860 | $ 8.8157 | $4.93 | $5.28 |
| 2nd year — 25% of the lifference of the Scale of the Cylinder Assistant and the Scale of a Web Pressman | 286.64 | 8.1897 | 8.8197 | 306.70 | 8.7629 | 9.4369 | 5.21 | 5.57 |
| 3rd year — 50% of the above diffeernce | 305.50 | 8.7286 | 9.4000 | 326.89 | 9.3397 | 10.0592 | 5.55 | 5.94 |
| 4th year — 75% of the above difference | 324.37 | 9.2677 | 9.9806 | 347.08 | 9.9166 | 10.6794 | 5.90 | 6.31 |
| Thereafter, full Web Pressman Scale | 343.23 | 9.8066 | 10.5609 | 367.26 | 10.4931 | 11.3003 | 6.35 | 6.80 |

## ** APPRENTICE IN OFFSET PREPARATORY DEPARTMENTS

**Inexperienced employees with a minimum of one (1) year employment in a shop covered under the Printers League-Local 51 Contract.

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1st year | $175.78 | $ 5.0223 | $ 5.4086 | $188.08 | $ 5.3737 | $ 5.7871 | $3.31 | $3.54 |
| 2nd year — 25% of the difference of the $175.78 and the Cylinder Pressman scale | 215.55 | 6.1586 | 6.6323 | 230.64 | 6.5897 | 7.0966 | 4.03 | 4.32 |
| 3rd year — 50% of the above difference | 255.32 | 7.2949 | 7.8560 | 273.19 | 7.8054 | 8.4058 | 4.76 | 5.09 |
| 4th year — 75% of the above difference | 295.10 | 8.4314 | 9.0800 | 315.76 | 9.0217 | 9.7157 | 5.48 | 5.86 |
| Thereafter, full journeyman scale Prep Department | 334.87 | 9.5677 | 10.3037 | 358.31 | 10.2374 | 11.0249 | 6.20 | 6.64 |

*This rate will be subject to change as a result of the Printers League Local 23 negotiations subsequent to May 1, 1975.

## LOCAL No. 51
## JOURNEYMEN VACATION CREDITS
### Effective April 1, 1976

| Base Scales DAYS | Per Shift Vacation Credit | Base Scales NIGHTS | Per Shift Vacation Credit | Base Scales LOBSTER | Per Shift Vacation Credit |
|---|---|---|---|---|---|
| $300.27 | $5.57 | $321.29 | $5.96 | $327.29 | $6.08 |
| 301.63 | 5.60 | 322.74 | 5.99 | 328.78 | 6.10 |
| 303.07 | 5.62 | 324.28 | 6.02 | 330.35 | 6.13 |
| 305.89 | 5.68 | 327.30 | 6.07 | 333.42 | 6.19 |
| 308.75 | 5.73 | 330.36 | 6.13 | 336.54 | 6.24 |
| 309.26 | 5.74 | 330.91 | 6.14 | 337.09 | 6.25 |
| 334.87 | 6.20 | 358.31 | 6.64 | 365.01 | 6.76 |
| 337.61 | 6.25 | 361.24 | 6.69 | 367.99 | 6.82 |
| 338.91 | 6.28 | 362.63 | 6.72 | 369.41 | 6.84 |
| 338.99 | 6.28 | 362.72 | 6.72 | 369.50 | 6.84 |
| 339.46 | 6.29 | 363.22 | 6.73 | 370.01 | 6.85 |
| 340.40 | 6.30 | 364.23 | 6.74 | 371.04 | 6.87 |
| 340.48 | 6.30 | 364.31 | 6.75 | 371.12 | 6.87 |
| 341.86 | 6.33 | 365.79 | 6.77 | 372.63 | 6.90 |
| 342.04 | 6.33 | 365.98 | 6.78 | 372.82 | 6.90 |
| 342.18 | 6.34 | 366.13 | 6.78 | 372.98 | 6.91 |
| 343.23 | 6.35 | 367.26 | 6.80 | 374.18 | 6.93 |
| 343.59 | 6.36 | 367.64 | 6.81 | 374.51 | 6.93 |
| 343.96 | 6.37 | 368.04 | 6.81 | 374.92 | 6.94 |
| 344.12 | 6.37 | 368.21 | 6.82 | 375.09 | 6.94 |
| 344.91 | 6.39 | 369.05 | 6.83 | 375.95 | 6.96 |
| 345.16 | 6.39 | 369.32 | 6.84 | 376.22 | 6.96 |
| 346.09 | 6.41 | 370.32 | 6.86 | 377.24 | 6.98 |
| 346.34 | 6.41 | 370.58 | 6.86 | 377.51 | 6.99 |
| 346.64 | 6.42 | 370.90 | 6.86 | 377.84 | 6.99 |
| 346.73 | 6.42 | 371.00 | 6.87 | 377.94 | 7.00 |
| 348.03 | 6.44 | 372.39 | 6.89 | 379.35 | 7.02 |
| 348.92 | 6.46 | 373.34 | 6.91 | 380.32 | 7.04 |
| 349.10 | 6.46 | 373.54 | 6.91 | 380.52 | 7.04 |
| 349.83 | 6.47 | 374.32 | 6.93 | 381.31 | 7.06 |
| 351.77 | 6.51 | 376.39 | 6.97 | 383.43 | 7.10 |
| 351.82 | 6.51 | 376.45 | 6.97 | 383.48 | 7.10 |
| 354.53 | 6.56 | 379.35 | 7.02 | 386.44 | 7.15 |
| 357.64 | 6.62 | 382.67 | 7.08 | 389.83 | 7.21 |
| 362.32 | 6.70 | 387.68 | 7.17 | 394.93 | 7.30 |
| 367.00 | 6.79 | 392.69 | 7.26 | 400.03 | 7.40 |

# SCALE AGREEMENT

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**SHOP RULES AND WAGE SCALES**
**CONTRACT FOR BOOK AND JOB OFFICES**

**between**

**PRINTERS LEAGUE SECTION,**
**PRINTING INDUSTRIES OF METROPOLITAN**
**NEW YORK, Inc.**

**and**

**NEW YORK PRINTING PRESSMEN AND**
**OFFSET WORKERS' UNION No. 51**
**I.P. & G.C.U.**

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## PART I — IDENTIFICATION

1. This wage scale and shop rules Contract made between the Printers League Section of the Printing Industries of Metropolitan New York, Inc., hereinafter called the "League," and New York Printing Pressmen and Offset Workers' Union No. 51, I.P. & G.C.U., hereinafter called the "Union," shall govern all employer members of the League who recognize by signature this contract with the Union.

2. The League recognizes the Union as the exclusive representative for collective bargaining for all employees in the pressrooms of the employers, engaged as printing pressmen and apprentice pressmen as listed in the wage scales contained in

this Contract. It is further recognized and agreed that all prior practices performed by employees covered by this Contract shall continue as heretobefore.

3. It is mutually agreed that an employee engaged to work in a job classification set forth in this Contract shall be employed in accordance with the provisions of this Contract and shall be paid the wages specified for such classification. The only exception hereunder shall be an apprentice regularly indentured in accordance with the manpower ratio and other apprentice provisions applicable under this Contract. Any employee not a member of the Union at the time of employment must make application for membership in the Union after thirty days from date of hiring. Any employee accepted into membership in the Union shall, as a condition of continued employment during the term of this Contract, pay or offer to pay the regular monthly dues of the Union. In the event that an employer indicates his intent to hire additional employees covered under this Contract, he shall designate the position to be filled and will state how long he expects the position to last.

The League and the Union pledge, that they shall continue to practice no discrimination in employment in regard to race, creed, color, national origin or sex.

The parties to the collective bargaining agreement agree to continue their policy of no discrimination against any employee because of race, creed, color, sex or national origin, with respect to wages, hours, advancement, selection for apprenticeship openings, or other conditions of employment.

The terms "journeymen," "pressmen," "brakemen pressmen," "tension men pressmen," and "cameramen," as used in the collective bargaining agreement are meant only to indicate the classification or status of employees, and are not related to the sex of employees. Any other use of the masculine gender in the collective bargaining agreement shall be understood to include the feminine gender as well.

4. It is understood and agreed, that if any provision of the previous Contract, excluded from this Contract solely because of the restrictions of the law is determined either by a legislative enactment or by a decision of the court of highest recourse to be legal or permissible, then the parties shall immediately enter into discussions with a view to the restoration of such clause.

5. In the negotiations for a new Contract the League shall submit to the Union on or before 90 days prior to the expiration of this Contract, a list of members of the League who will accept and will operate under the terms of the new Contract; those firms only and new members of the League, and such other firms as may accept prior to the conclusions of negotiations by conciliation or prior to a decision through arbitration, shall be bound by the new scale and shop rules contract.

*Effective April 8, 1972*, subject to the existing requirement of law for written authorization from the respective employees, the Employer shall deduct monthly from the earnings of the employees covered by this agreement the Union dues (which includes initiation fees and standard Union assessments) of such employees and forthwith remit same to the Union. Monies so deducted shall be deemed trust funds in the hands of the Employer.

The Union and the League will review and agree on the proper administrative implementation of the checkoff procedure.

## Definition of Book and Job Office

6. A Book and Job Office is an office which does printing for the public or for an individual firm or company, or one that operates a printing plant for the production of its own or others' weekly, semi-weekly, tri-weekly, or monthly publications, whatever the equipment of the foregoing may be, or whatever the hours of the day they may be operated.

## PART II — DURATION

7. All the terms as set forth in this contract shall be effective on March 4, 1975 and shall continue until March 3, 1977.

8. For the renewal of this Contract, the Union shall present to the League and the League shall present to the Union 90 days prior to the expiration of this Contract, a statement in writing of proposals for changes both in shop rules and scale of wages. All proposals shall be included in the first statement, subject to change in negotiations. Negotiations shall be entered into promptly following the interchange of proposals, and efforts made by each party with the other to conciliate points of difference.

## PART III — SETTLEMENT OF DISPUTES

The following rules shall govern all employees, employed by members of the League who are parties to this Contract, and employment is given and accepted under these conditions:

9. No precedents or previous conditions, rules or agreements, shall be recognized in any way or affect or modify these rules which are to be interpreted or changed only in accordance with the provisions of this Contract or through arbitration under the Arbitration Agreement between the League and the Union.

All employees are cautioned against any infraction of rules contained herein, as such will be the cause of discipline either by immediate dismissal or by complaint made through the League to the Union.

10. All complaints emanating from any party to this contract shall receive prompt acknowledgment and attention, and every effort shall be made to reach a prompt and satisfactory adjustment.

11. In the event of a difference arising between a member of the League and the Union, all work shall continue without interruption pending proceedings looking to conciliation or arbitration, either local or international, and the scale of wages and hours provided in contract between the parties and working conditions prevailing prior to the time the difference arose shall be preserved unchanged until a final decision of the matter at issue shall have been reached.

12. When a complaint is made, it shall be immediately transmitted to the organization to which the party complained of belongs. Such complaints to be adjusted within a period not exceeding 30 days.

13. The Chapel Chairman shall be the recognized official representative of the Union.

14. The Foreman shall be the recognized official representative of his employer in dealing with the Chapel Chairman.

15. Questions arising over the jurisdiction of the Union shall be determined in the same manner as any other disputes.

16. The Union's accredited representative may enter the pressroom at any time of the day or night. He shall, upon entry, report his presence to the business office. In the event the principal of the plant or his designated office representative is un-

available, or in the event the business office is closed, the man in charge of the pressroom shall be considered the official representative of the business office.

The Union's accredited representative shall be free to investigate complaints of violations, shall have the right to examine all working cards but shall not collect any dues or assessments and shall conduct his investigations in such manner as not to interfere with production. The Chapel Chairman shall be permitted to consult his Union regarding any alleged infraction of the Contract which in order to preserve harmony demands immediate adjustment. In the case of any complaint made either by the League or the Union, the League and the Union reserve the right to jointly investigate the conditions. In case the Secretary-Treasurer or the President of the Union requests a copy of any pressroom payroll for the purpose of making correct returns of the earnings of members of the Union, he must be furnished same; provided the Union will pay the legitimate expense of making up such payroll, and, provided, further, that any request for payrolls from members of the League will be made to the Executive Vice President of the League.

## PART IV — VACATIONS

17. An employee covered by this Contract shall receive vacation credits per shift worked, less Withholding and Social Security taxes, based on the regular straight time base contract rate for the press and the shift upon which he is regularly employed in accordance with the vacation credit schedule shown in this book. In the case of an employee who is employed on more than one press in any fiscal week, his vacation credits for that week shall be based upon the press on which he worked the majority of time during said week.

In the event an employee receives over-the-scale compensation he shall be paid per shift vacation credits in addition to the above in proportion to the amount of his over-scale compensation.

In the case of an employee leaving a firm before the end of the vacation year the employer shall pay earned vacation credits due within two weeks of the date of leaving. The number of days to be granted as a vacation to the employee shall be determined by dividing the total amount of vacation credits earned during the vacation year beginning April 1st and ending March 31st

of each year, by the base Union rate per shift paid to the employee at the time of his vacation, but under no condition shall the vacation period exceed twenty (20) full working days, subject to Section 20. Fractional parts of a day earned as a vacation shall be disregarded and only whole days shall be considered in granting vacations to the employees, provided, however, that this provision shall not offset the amount of vacation allowance to which each employee shall be entitled in accordance with the provision of this paragraph.

18. Vacation credits shall be paid to all employees who qualify and receive holiday pay, when no work is required.

19. Employees shall receive vacation credits for each shift worked including 6th and 7th day employment and credits for paid holidays. Vacation credits computed on the formula of 220 vacation credits to establish four (4) weeks vacation pay. Vacation credits shall be directed on a monthly basis to the Vacation Depository Fund.

20. *Effective March 4, 1975*, four (4) weeks of the vacation is mandatory and cannot be cumulative from year to year. The period during which two (2) weeks of vacation shall be taken must begin April 1st and end October 31st, and all such vacations must start and end within this period, and the days of such vacation must be consecutive. The third and fourth weeks of vacation may be taken in periods of two consecutive weeks, or one week increments at any time during the year, but in all cases, the days must be consecutive.

Prior to March 1, 1976 and prior to March 1, 1977, the Union and the League shall review the employment situation in the industry and, if economic conditions warrant, shall waive the mandatory provisions of the fourth week vacation.

Employees absent who receive Compensation under the terms of either the Workmen's Compensation Act or the New York State Disability Law or the New York Pressroom Unions-Printers League Welfare Trust Fund shall receive such days including the waiting period as credit toward the number of days worked that they are required to be eligible for vacation credits under the terms of this section for 90 days in each contract year.

21. The foreman of each office shall designate the time when the employee shall go on vacation which shall be so arranged as not to interfere with the efficient operation of the office. However,

where the nature of the work permits, employees shall have preference to the choice of vacation time so designated in the order of their length of service in that office.

The foreman of each office shall post not later than March 15th of each year the vacation schedule of employees covered by this Contract.

22. Payments for vacation credits for apprentices shall be computed on the percentage basis of the journeyman wages rates as provided for in this Contract.

23. When employees are on scheduled vacations, they are not eligible for employment in any other pressroom.

## PART V — WORKING CONDITIONS

### Hours

24. DAY SHIFT: Monday through Thursday: Seven consecutive hours (exclusive of time for lunch) shall constitute a day shift, the hours to be between 7:30 a.m. and 5:30 p.m.

Friday: Six and one-half consecutive hours (exclusive of time for lunch), the starting time and lunch period to be the same as Monday through Thursday, shall constitute the Friday day shift. Provided, when an employee is not scheduled to work on a Friday because of a paid holiday, the six and one-half hour provisions of the Friday shift shall be applied to the Thursday shift.

25. NIGHT SHIFT: Monday through Thursday: Seven consecutive hours (exclusive of time for lunch) shall constitute a night shift, the hours to begin not later than 8:00 p.m., and on the eve of a holiday, not later than 6:00 p.m.

Friday: Six and one-half consecutive hours (exclusive of time for lunch), the starting time and lunch period to be the same as Monday through Thursday shall constitute the Friday night shift. Provided, when an employee is not scheduled to work on a Friday because of a paid holiday, the six and one-half hour provisions of the Friday shift shall be applied to the Thursday shift.

26. THIRD (LOBSTER) SHIFT: 31¼ hours of 6¼ consecutive working hours for five consecutive nights, Monday to Friday inclusive.

There may be separate starting times of up to one (1) hour either before or after the starting time of the regular day, night or lobster shifts for the pressroom and/or preparatory departments as long as it is within the framework of the hours of the contract for the respective shifts.

27. When a plant operates 24 hours per day for a continuous period of one week or more, every effort must be employed to establish a third shift.

28. When time is called, employees must be at their appointed stations ready to work, and shall remain there and at work until the calling of time at the end of that period. Time shall be called by the method employed in each individual shop.

29. Any employee who is found guilty of falsifying time cards or records, or ringing up someone else's time card, or causing someone to ring up his time card, shall be immediately discharged and shall forfeit his right to pay for the time falsified. The facts of the matter concerning such employee shall be reported in writing to the League and to the Union, which shall impose adequate penalty and report to the League and the employer on the action so taken.

30. There shall be no eating, chapel meetings, or gatherings of employees during the hours of labor.

## Lunch Time

31. Lunch time may be arranged by mutual consent, but the foreman cannot keep an employee more than four and one-half hours before allowing a reasonable time for lunch, except in cases of emergency. Any regular employee compelled to work during lunch time must take the regular time off for lunch when the other employees return to work.

Price and one-half shall be paid for work during lunch period on each occasion worked.

32. Forty-five minutes, unless otherwise mutually agreed, shall be allowed for lunch time, as near the middle of the working period as practicable.

33. Whenever an employee is required or permitted to work overtime before and/or beyond regular shift hours one hour and one-half, one-half hour shall be allowed to obtain lunch; there-

after he shall be entitled to another lunch period of one-half hour for every four hours of actual overtime worked. Lunch time shall be paid for at overtime rates of the period within which it occurs; provided, that when an employee is required to work overtime for less than one hour and one-half, the above provision shall not apply.

## Holidays

34. LEGAL HOLIDAYS: The following are the recognized holidays, and no new holidays shall be observed except by mutual consent of the Union and the League: New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Thanksgiving Day, the Friday after Thanksgiving (effective contract year beginning March 4, 1976) and Christmas Day. Effective March 3, 1975, Lincoln's Birthday shall be recognized as a floating holiday and can be celebrated on either February 12th or any other day throughout the contract year on a shop basis where it is mutually agreed by the employer and the majority of the emloyees covered by this contract. If celebrated on a day other than February 12th, the date selected must be chosen 30 days prior and such day posted in the shop.

The employer hereby agrees to pay to regular employees, both journeymen and apprentices, a day's pay at straight time rates when no work is required for all recognized holidays listed above (or days celebrated as such).

To qualify for holiday pay, an employee must work, or stand ready to work, the four regular working days of the calendar week in which the holiday occurs, unless ill or excused by management, except where a new employee starts work on the first day of the week in which a holiday occurs and is previously notified that the duration of his employment shall be less than four days in that week.

It is agreed that an employee laid off during the calendar week of the holiday stands ready to work and qualifies for holiday pay. However, an employee employed in a shop three months or longer temporarily laid off in the week preceding the week in which the holiday occurs shall qualify for holiday pay. Where an employee employed in a shop three months or longer is permanently laid off in the week preceding the week in which the

holiday occurs, he shall qualify for holiday pay if the layoff occurs within three working days of the contract recognized holiday. No employee can qualify for, or obtain pay for a contract recognized holiday from more than one employer, and no employee out ill or laid off can qualify for pay for more than one contract recognized holiday during a given illness or layoff.

When a holiday falls on a Saturday, it shall be celebrated on the Friday preceding the Saturday holiday. In the event the employee is required to work on such holiday, he shall receive Saturday rates for such work in addition to the shift's pay specified for such holiday. If required to work overtime, the Saturday rates for such work shall prevail.

An employee called in to work on a contract recognized holiday shall receive time and one-half for the first half of the shift and double time for the second half of the shift in addition to the day's or night's pay specified for such holiday when no work is performed. Any time worked before or after the regular hours of the shift on a contract recognized holiday shall be paid for at triple time. An employee called in to work on Saturday night when it is the night of the holiday shall be paid for the Saturday night shift as provided in Section 41 in addition to the night's pay specified for such holidays when no work is performed.

35. For the night shift the holiday shall be the night of the holiday and for the 3rd shift (lobster) the holiday shall be the morning following the holiday.

36. Sundays shall be charged at double time rates; any portion worked of the regular hours of the shift of such day shall be considered a day's work. Any time worked before or after the regular hours of the shift of such day shall be paid for at triple price.

## Jury Duty

37. Regular journeymen employees and apprentices required to be absent from employment to serve on a jury or day of qualification shall be paid regular wages minus any pay received as juryman for a maximum of fifteen (15) days during the life of the contract, in addition to day of qualification. Such absence shall be supported by a statement signed by the clerk of the court certifying as to each day of jury duty. To be eligible for such payment, the employee must inform his foreman in writing of

the call to qualify or to jury service within twenty-four (24) hours, exclusive of Saturdays and Sundays.

## Death Leave

38. In the event of death in the immediate family of a regular journeyman employee or apprentice, such regular employee shall be granted three (3) days leave without loss of pay provided such three (3) days fall within the regular employees' regularly scheduled work week. For the purpose of this paragraph, "immediate family" shall include spouse, parent, children, brother, sister, grandmother, grandfather, father-in-law, mother-in-law, son-in-law, daughter-in-law, or any legal dependent as defined by the Internal Revenue Code and Regulations.

39. It is mutually agreed that for purposes of determining eligibility for Jury Duty pay and Death Leave as provided in Sections 37 and 38 above, regular employees are defined as follows:

1. An employee who is currently employed in the plant at the time of the claim and who has worked in that plant for a minimum of five (5) consecutive working days prior to such claim and for not less than thirty (30) regular working days during the preceding three month period; or

2. An employee who is currently employed in the plant at the time of the claim and has been steadily employed by that plant during the past year but whose five (5) days of consecutive employment at the time of the claim has been interrupted by reason of illness or temporary layoff.

## Paid Sick Leave

40. Effective date of ratification, an employee employed in an office covered by this contract who worked 110 days in one contract year shall receive in the following contract year five (5) days of paid sick leave.

Unused sick leave shall be paid for in cash each anniversary date of the contract. Unused sick leave paid in cash on the anniversary date of the contract shall not require the payment of vacation credits.

An employee whose employment is terminated for any reason shall receive in addition to sick leave earned in the previous

contract year one day's paid sick leave for each twenty-two (22) days worked in the contract year in which his employment is terminated.

In crediting the number of days worked toward the first day of sick leave benefit the full 22 days must be worked. For those who earn more than one but less than five (5) days' sick leave benefit, the major fraction of 22 (12) days shall result in an additional full day's sick leave benefit. In making the count of days required by this section, credit shall be given for days paid for (but not worked) pursuant to this agreement as holidays, jury duty, paid sick leave and bereavement leave.

No employee employed in a firm covered by this contract shall be eligible to earn more than five (5) days' sick leave in each contract year. An employer shall not be required to give credit toward sick leave to employees who have acquired full credit in a contract year in any other firm or combination of firms having book and job contracts with New York Printing Pressmen and Offset Workers' Union No. 51.

Time off for which an employee receives paid sick leave shall be included in the schedule of days worked for which vacation credits are paid and for which welfare and pension contributions are made.

Employees absent who receive compensation under the terms of either the Workmen's Compensation Act or the New York State Disability Law or the New York Pressroom Unions-Printers League Welfare Trust Fund shall receive such days including the waiting period as credit toward the number of days worked that are required to be eligible for sick leave under the terms of this section for 90 days in each contract year.

## Overtime

41. Overtime: Price and one-half for the first four hours of actual work after which double price for the second four hours and triple price thereafter. Less than one-half hour at overtime rates shall not be worked or paid for when overtime is worked.

When a Saturday day shift is worked, employees shall receive time and one-half for the first half of the shift and double time for the second half of the shift; if required to work before or after the regular shift hours, they shall be paid at the rate of triple price.

When a Saturday night shift is worked, employees shall receive time and one-half for the first half of the shift and double time for the second half of the shift; all time worked before or after the regular hours of the shift shall be paid for at triple price; provided, however, that where it is shown to the Joint Conference Committee that it is necessary to operate a Saturday night shift to the mutual advantage of parties to this Contract, the said Committee is authorized to determine the conditions under which such Saturday night shift shall be operated.

## Early Call

42. Employees called to work one hour or less before the regular starting time of their shift shall be paid price and one-half up to the regular starting time of their shift; if called to work more than one hour before starting time of their shift, double price shall be paid for all time worked up to the regular starting time of their shift.

## Ten-Hour Rule

43. Ten hours must intervene between time of quitting and starting work. An employee reporting at the end of the ten-hour period immediately following the usual day's work shall be paid at the rate of single time. An employee ordered to report to work at the regular starting time of the shift, before the expiration of the ten-hour period shall be paid at the overtime rate prevailing at the time at which his previous day's work ended until the ten-hour period has expired. An employee working the major portion of any shift that he starts with must be paid for the full day.

## Subs and Extras

44. When an employee is hired, he shall report for work within a reasonable time, not to exceed one hour; or, if hiring occurs on the day before, he shall report at the regular hour for beginning work, or forfeit any time lost thereafter.

45. Employees shall receive a full day's or full night's pay when called in to work on extra jobs, unless they are employed for one full day or one full night immediately following the day of their engagement, in which case they shall only be paid for

the actual time worked. This shall not apply to employees discharged for incompentency after trial, in which case they shall be paid for actual time worked.

46. A substitute put on for an employee who has quit or failed to keep his engagement to work shall be paid by the employer only from the time he actually began work and at the regular rate. Any excess shall be paid by the derelict employee.

## Payment of Wages

47. Payment of wages shall be made weekly in cash not later than seventy-two hours after the close of the fiscal week, excepting where Saturday, Sunday or holidays intervene, and not more than seven working days shall elapse between pay days. Payment by check is permitted provided it is done in conformity with the New York State law. When a legal holiday falls on pay day, payment of wages shall be made on the day preceding the holiday.

48. Each and every employee must refuse to perform any work whatsoever in an office which has not paid wages in full for previous week's work as herein stipulated; said prohibition to remain on said office until all employees have been so paid. No further action by the Union shall be necessary when wages have not been so paid.

## Quitting Work, Lay-offs and Discharges

49. Any employee, who is a member of the Union, who quits his position or fails to keep an engagement to work without reasonable notice or excuse to the one in charge or without putting on a competent substitute, shall be subject to discipline by the Union by fine or otherwise.

50. An employee who quits or who refuses to comply with the instructions of the foreman or the one in charge, which shall be deemed equivalent to quitting, after beginning a day's work, shall be entitled to no compensation for any part of that day. Sickness shall be the only accepted excuse for an employee quitting short of his time.

51. Employees who have been employed in an office who have not been previously notified of their being laid off, and employees who have been ordered to report for work and report at the usual

time, shall receive a full day's or night's pay if not put to work, except in case of fire or unavoidable cause.

52. The employer shall be reimbursed by the employee through the Union at the regular rate of wages for all time lost the first day or night through an employee quitting or failing to keep an engagement to work if the employer makes a reasonable effort to secure a substitute.

53. In cases where employees are laid off before the regular pay day they shall be entitled to, and shall immediately receive, whatever sum may be due them, on demand, provided men so laid off on any other than the day shift shall receive their pay on demand the next working day and if not paid before 12 o'clock noon, every hour lost thereafter in waiting must be paid for at the rate received while working.

54. Employees ordered by foremen to report for work shall, upon so reporting, become entitled to a day's or night's pay. (This section is subject to Sections 44, 45 and 46).

55. No employee shall be paid for less than a full day unless he be discharged for incompetency or for disobedience of rules. If employed for more than one full day, he shall be paid only for the time actually worked the first day, provided this rule shall not apply in case of tardiness of regular employees or time taken off at employee's own volition. (This section is subject to Sections 44, 45 and 46).

56. An employee cannot quit, or be laid off or discharged, without reasonable notice, and the Chairman must be notified. Forty-eight hours before the close of the last working day shall be considered reasonable notice for layoff of regular employees except in case of fire or unavoidable cause; and except in case of fire or unavoidable cause there shall be no layoff or discharge of an employee by telephone or telegram. Temporary employees and substitutes hired for jobs of limited duration only shall not be laid off without reasonable notice. Notice of layoff not later than the start of the regularly scheduled lunch period on the day or night of layoff, as the case may be, shall be considered reasonable notice for such temporary employees.

For purposes of this Section an employee shall be considered a temporary employee and/or substitute if upon hire he is told (1) that he is being hired specifically to take another employee's place who is out ill or out for any reason on other than a per-

manent basis; or (2) that he is being hired specifically for a given job which has come into the shop and this employment will terminate when that work is completed. Also, any employee who has not worked in a plant for a minimum of five (5) consecutive working days prior to the layoff and for not more than twenty (20) regular working days during the three months preceding the layoff, shall be considered a temporary employee.

Any employee quitting his position must notify the foreman forty-eight (48) hours prior to the close of his last working shift that he will be quitting his position, or forfeit the pay of two shifts if he fails to give such notice. This penalty shall not apply, however, where an employee quitting his position because of recall to another shop advises the office directly upon being notified of such recall.

57. In the event of discharge or layoff of an employee, if he considers that he has been discriminated against, upon demand the foreman shall give the reason for discharge in writing, and the employee shall have the right to trial before a Joint Committee consisting of three members of the League and three members of the Union, which Joint Committee shall select a Chairman from their number. After considering all of the evidence in connection with the reason assigned for discharge, effort at agreement shall be made, and if a decision is reached, it shall be final and shall be so accepted by both parties to the controversy. If agreement cannot be reached, the Committee shall select a seventh man, and the decision of the Committee thus constituted shall be final.

58. When the foreman finds it necessary to reduce the force, employees may be rotated or laid off as the nature of the work requires. The Chapel Chairman shall not be discriminated against in the rotation of the force.

Employees with six months or more length of service in an office shall have seniority rights and the right of recall in that office as set forth below:

When the foreman finds it necessary to decreace the force other than by rotation and such layoff affects employees with nine months or more length of service in an office, such decrease will be accomplished by the laying off first of the person or persons last employed as the nature of the work may require.

Employees in an office for more than six months who have demonstrated their competence in that office to perform other

than the job classification for which they were hired shall have preference to such other work over employees with lesser length of service in that office.

However, an employee claiming other work to avoid layoff to reduce the force shall be physically qualified and capable of performing all journeyman skills including make-ready, register, etc., required on such work, and shall not be exempt from discharge if unqualified or incompetent.

The obligations of recall by an office shall cease where it notifies the Union of its intent to fill a position of a laid off employee entitled to recall.

An employee's seniority rights and right of recall shall cease 130 days after date of layoff.

The Union shall be notified no later than 36 hours preceding the day an employee is to report on recall. The Union shall notify the office promptly whether or not an employee is returning, but in any case not later than noon of the shift preceding the day the employee is to report. Nothing in the above shall interfere with the employer's right to fill the job temporarily in the meantime.

Such employee shall lose all seniority right and rights of recall in that office if he does not make himself available on recall unless sick or hospitalized. The employer may require evidence of illness.

A letterpressman who is brought over to be trained in offset shall not lose seniority rights on those letterpresses on which he has demonstrated his competency in that office. However, his seniority rights in offset shall not commence until he has been used by the office in offset for a period of one year at which time the office shall designate whether he is competent in offset. An employee's seniority rights in offset shall be determined by only the number of years used in offset by that office. However, his time in offset shall be added to his letterpress years as a basis for his letterpress seniority.

Nothing in the above shall interfere with the right of the office to transfer employees freely from one class of work to another without regard to length of service.

No employee can hold seniority status in more than one office.

59. Members holding Union office shall retain their seniority in the plant in which they last worked and their tenure in office shall be added to their seniority. If at such time a member hold-

ing Union office returns to the plant in which ey hold seniority, they must demonstrate competence on the equipment in that plant.

## Sanitary Conditions

60. The employer shall furnish at all times a healthful, sufficiently ventilated, properly heated and well-lighted space for the performance of all work and all sanitary conditions shall be in accordance with the laws of the State of New York and the New York City Health Codes. Employers covered by this Contract shall also maintain, as a minimum, locker facilities for hanging clothes during working hours.

The parties agree that, during the life of the contract, a health and welfare study will be made in the interest of safeguarding the health and welfare of the employees covered by this contract.

Any expenses related to such study shall be borne by the Relocation, Education, Retraining Fund.

## PART VI — WELFARE TRUST FUND

61. The League and the Union have executed a separate agreement to provide welfare for journeymen and apprentice employees covered by this contract. This agreement provides that the members of the League shall contribute to a Fund to be known as the New York Pressroom Unions — Printers League Welfare Trust Fund. In addition to the wages as set forth in the Wages Scales Section of the contract the members of the Printers League shall contribute weekly to the New York Pressroom Unions — Printers League Welfare Trust Fund contributions in the amount of five and eleven one hundred per cent (5.11%) of gross earnings for each cylinder and job journeyman and apprentice employee covered by this contract.

It is understood by the Printers League, and the Printers League hereby approves, the arrangement that payment to the New York Pressroom Unions — Printers League Welfare Trust Fund shall be permitted and accepted from employers in the book and job industry in New York City, who are presently not members of the Printers League, and from the Union for members employed in union activities, and the Fund for its Administrator

and office employees, provided such payment shall be made on the same basis as herein provided, and to the extent permitted by the Fund Trust Agreement.

Any Contributing Employer who fails to make contributions to the Fund as required shall be liable for expenses of collection (at 25% of amount owed the Fund) incurred by the Trustees, and for interest at the rate of 6% on the amount owed the Fund.

This separate agreement as executed shall not be the subject of further negotiations between the parties prior to March 3, 1977.

## PART VII — PENSION FUND

62. The League and the Union have executed a separate agreement to provide pensions for journeymen and apprentice employees covered by this contract. This agreement provides that the members of the League shall contribute to a Fund to be known as the Printers League — Pressroom Unions Pension Fund. In addition to the wages as set forth, the League and the Union have executed a separate agreement to provide pensions for journeymen and apprentice employees covered by this Contract. This agreement provides that the members of the League shall contribute to a Fund to be known as the Printers League — Pressroom Unions Pension Fund and that each member of the League shall contribute weekly the sum of five and fourteen one hundreds per cent (5.14%) of gross earnings of each journeyman and apprentice employee covered by this contract.

Effective September 1, 1975, in addition to the wages as set forth, the League and the Union have executed a separate agreement to provide pensions for journeymen and apprentice employees covered by this Contract. This agreement provides that the members of the League shall contribute to a Fund to be known as the Printers League — Pressroom Unions Pension Fund and that each member of the League shall contribute weekly the sum of five and three quarters percent (5.75%) of gross earnings of each journeyman and apprentice employee covered by this contract.

Payments to the Trust Fund hereinabove mentioned shall be accepted from employers not presently members of the Printers League but having substantially similar collective bargaining agreements with the Union and, to the extent that the Trust Agreement may so provide, from the Union for its officers and employees, and the Fund for its Administrator and office em-

ployees, provided that such payments shall be made on the same basis as herein set forth.

Any contributing Employer who fails to make contributions to the Fund as required shall be liable for expenses of collection (at 25% of amount owed the Fund) incurred by the Trustees, and for interest at the rate of 6% on the amount owed the Fund.

This separate agreement as executed shall not be the subject of further negotiations between the parties prior to March 3, 1977.

## PART VIII — E., R. & S.U.B. AND INCOME SECURITY FUNDS

63. Relocation & Displacement/Education & Retraining Funds: To be combined as one jointly Trusteed Fund between Printers League and Local 51 to be hereinafter called New York Printing Pressmen Union 51, Printers League Education, Relocation and Supplemental Unemployment Fund (E., R. & S.U.B.) Effective March 4, 1975, contributions to be at the rate of 2% of gross earnings for all journeymen and apprentice employees. The combined Fund will necessitate a new Trust Agreement and the scope and objective of the resultant Fund will be broadened.

64. Effective April 8th, 1971, the New York Printing Pressmen and Offset Workers' Union Local 51, Printers League Income Security Fund was formed. Contributions paid by the Employer are $2.40 plus 31¢ vacation adjustment, totaling $2.71 per shift, five shifts per week maximum.

The purpose of this Fund is to provide a balanced program in which a member has cash liquidity at retirement in addition to his pension and Social Security. This plan also provides a member the advantage of a combination of fixed dollars and equity dollars.

## PART IX — PRESSROOM FOREMEN

65. Where there is more than one pressman employed there shall be a foreman and he shall be the only person to whom application shall be made for a situation. He shall be the only person for employing and discharging employees.

66. No foreman shall run a press or cut or manufacture overlays where there are more than seven cylinders running.

67. There shall be a working foreman employed in all departments of offset and rotogravure preparatory work, where there are seven or more journeymen employed.

68. In book and job and magazine pressrooms no foreman shall take charge of a pressroom having more than twenty (20) presses, either cylinder or rotary, without an assistant foreman on the floor. Where pressrooms are divided or on separate floors, they shall be considered as separate pressrooms, except where the total number of cylinder and rotary presses does not exceed twenty (20) presses. Any number of presses over forty (40) to be regulated according to the spirit of this section.

69. Two-color or perfecting flatbed, two-color Harris, sheet-fed rotary and web presses, shall count as two in the complement. Multi-color newspaper web presses shall count as four in the complement.

70. All orders for the pressroom shall emanate from the foreman, who shall be considered the representative of the employer. Any complaint over orders issued or action taken by the foreman, in pursuance of his duties as foreman, shall be disposed of in the same manner as other disputes arising under these rules. The foreman may be a member of the Union.

Foremen who are not now members of the Union shall be given the opportunity to join the Union, but their employment status shall not be affected by their decision. Foremen created subsequent to the effective date of this contract, if not already members of the Union shall be subject to the provisions of Section 3 of the contract which requires employees to make application for membership in the Union after thirty (30) days from date of hiring.

71. Any foreman who operates presses either before or after his regular shift hours or on Saturday, shall be paid overtime for such mechanical work. However, no foreman shall displace any employee regularly engaged in the operation of such presses, except in cases of emergency where such regular employee is not available. Nothing in this section shall prevent foremen coming in for supervisory purposes at any time.

72. Where there are more than fourteen job presses in operation, the foreman shall not operate a press. All types of automatic machines shall count as two in the complement of presses.

73. For fifteen or more job presses an assistant foreman is required.

74. Where cylinder and job pressrooms are separate departments and more than one job pressman is employed, one shall act as working foreman. This shall not apply where there is a general pressroom foreman in charge. The foreman of the pressroom must be a journeyman pressman.

## PART X — CHARACTER OF WORK

75. An employee may be assigned to any position other than the position for which he was engaged, with the provision that if such other position carries with it a higher scale than the scale he has been receiving, he shall receive while filling that position the scale provided for the same. In no case shall an employee be paid for such temporary work at a scale lower than he has been receiving at his regular position.

76. No person, except a journeyman, brakeman, tension man or an apprentice pressman who has served six months of apprenticeship shall be allowed to work at the cutting of primary overlays for illustration.

77. An assistant or an apprentice shall do whatever is essential in the judgment of the foreman or the pressman that will assist in the preparation and operation of the press to which he is assigned.

## PART XI — COMPLEMENT OF MEN

78. The complement of men required when a press is running shall be employed while the press is being made ready. They shall be subject to the direction of the foreman to do any work required of them, provided such work shall not displace a regular employee. In the event of any press working overtime the man employed on said press shall be given preference to the overtime, except in cases of emergency.

79. A pressman may run not more than two single cylinder presses (68 inches or under), two automatic cylinder presses, one perfecting press, one two-color press, one sheet fed rotary, one cylinder over 68 inches. He shall not run more than one auto-

matic cylinder press up to and including 23 inches on halftone or color work without an assistant nor shall he run more than one automtic cylinder press over 23 inches up to and including 42 inches without an assistant. No pressman shall run two presses on separate floors.

Job pressmen on platen presses shall not operate more than four hand-fed platens or two automatic platens.

Two platens in combination rated as one automatic platen or one automatic cylinder.

Job cylinder pressman shall not operate more than two automatic cylinder presses.

On combination jobs, not covered by this Contract, the scale of the highest rated press shall apply.

Where work schedules make it necessary for an office to run flat-bed 46 inches and 56 inches multi-color letterpresses at less than full color capacity, the complement required for such work shall be that of the lesser color press except that no employee may be laid off as a result of operating the press with the reduced complement.

Special machines not covered by this Contract shall be settled by mutual consent.

Complement for Duplicators, Multiliths and small offset presses up to and including 20 inches (all press sizes refer to the larger dimensions of the maximum size of the sheet).

15 in. and under —
1 press assistant for one
1 pressman (job) for two

Where above presses have two heads or color cylinders —
1 pressman (job) for one

16 in. up to and including 20 in. —
1 pressman (job) for one
1 pressman (cylinder) for two

Where above presses have two heads or color cylinders —
1 pressman (cylinder) for one

Pressmen presently operating duplicators and multilith presses 15″ and under may not be laid off as a result of the office being permitted to run one such press with a press assistant nor may they cause the layoff of any other pressman by being shifted to other productive work.

Complement of Men on Sheet Fed Offset Presses over 20″:

Single color offset presses:

over 20″ up to and including 33″ —
1 pressman per press

34″ up to and including 61″ —
1 pressman and 1 assistant

62″ and over —
1 pressman, 1 assistant and 1 tender

Two color offset presses:

*Up to and including 33″ —
1 press ..... 1 pressman and 1 job assistant
2 presses .... 2 pressmen and 1 job assistant

*Where such press is used on proving work, job assistant shall not be required.

34″ up to and including 61″ —
1 pressman and 1 assistant

62″ and over —
1 pressman, 1 assistant and 1 tender

Four-color offset presses:

Up to and including 50″ —
1 pressman and 2 assistants

51″ up to and including 61″ —
2 pressmen and 1 assistant

62″ and over —
2 pressmen, 1 assistant and 1 tender

In the interest of training qualified offset journeymen, a pressman may be utilized to replace an assistant in the complement of any offset press.

It is understood that this provision may be put into effect only where mutually agreed with New York Press Assistants and Offset Workers' Union No. 23, New York Printing Pressmen and Offset Workers' Union No. 51, the League and the Company. It is further understood that the purpose of this provision is to enable a Company whose offset operations are being expanded through the addition of new offset presses or the increase in number of shifts to train journeymen pressmen in its employ on offset press work by temporarily replacing the assistant pressman in the complement for such presses.

The complement of men on web fed offset presses shall be as follows:

When running 1 or 2 rolls, folded sheets, the complement of men on web offset presses shall be as follows:

| WEB WIDTHS | 1 unit<br>2 plate cyl. | 2 unit<br>4 plate cyl. | 3 unit<br>6 plate cyl. | 4 unit<br>8 plate cyl. | 5 unit<br>10 plate cyl. |
|---|---|---|---|---|---|
| 18″ up to and including 30″ | 1 pressman<br>1 assistant<br>1 fly boy* | 1 pressman<br>1 assistant<br>1 fly boy* | 1st & 2nd pressman<br>1 assistant<br>1 fly boy* | 1st & 2nd pressman<br>1 assistant<br>1 fly boy* | ———— |
| 31″ up to and including 38½″ | 1 pressman<br>1 assistant<br>1 fly boy* | 1 pressman<br>1 assistant<br>1 tender<br>1 fly boy* | 1st & 2nd pressman<br>1 assistant<br>1 fly boy* | 1st & 2nd pressman<br>1 assistant<br>1 tender | 1st & 2nd pressman<br>1 job pressman<br>1 assistant<br>1 tender |
| 39″ up to and including 55″ | 1 pressman<br>1 assistant<br>1 tender | 1 pressman<br>2 assistants | 1st & 2nd pressman<br>1 assistant<br>1 tender | 1st & 2nd pressman<br>2 assistants | |

* — When the 3rd and 4th rolls are running, the complement shall be that specified by contract except that the Tender may perform the duties of the Fly Boy.

The pressman who is selected by the Company for such in-plant offset training shall have been in the Company's employ one year or longer and the assistant pressman taken off the press during the period the training program is being conducted shall not be laid off nor may he cause the layoff of any other press assistant in the plant by being assigned to other productive work. Unless it is otherwise mutually agreed the training period under this provision shall not exceed three (3) months in any given instance.

The complement shall be the same where 1 or 2 rolls are running; where 3 or 4 rolls are running a tender shall be added to the above complement.

In instances when less than all units of a two or more unit press are in operation, the complement shall be that for the number of units operating except that no number of the press crew of such press may be laid off as a result of operating the press with the reduced complement or cause the layoff of any other pressroom employee by being shifted to other productive work.

It is further recognized and agreed that all prior practices in regard to manning and operation of business forms presses covered by this contract shall continue as heretofore.

80. COMPLEMENT OF MEN ON WEB AND ROTOGRAVURE PRESSES: A first pressman on all book and magazine web presses. Second pressman required on double-roll book and magazine web presses of any size when two rolls are running or on single-roll book and magazine web presses having one or more of the following attachments when in operation: stitching, pasting, covering or inserting; and on single-roll book and magazine web presses 60 inches or over, having one or more color attachments in operation. Second man required where the details of the work make it necessary. Brakeman pressmen required on all size book and magazine web presses. Tension pressmen required on all offset rolls while in operation. Operator required for one or two automatic feeders, more operators required where the details of the work make it necessary. On newer type book and magazine web presses not now operating in New York City it is agreed that the complement of men will be settled by mutual agreement as provided in Section 81 taking into account current competitive operations of such presses. On web presses, other than book and magazine, complement of men to be settled by

mutual agreement as provided in Section 81. In the event of the proposed introduction of 7/0 Miehle presses not now operating in New York City for the purpose of holding work in the City or bringing new work into the City it is agreed that the complement of men will be settled by mutual agreement taking into account current competitive operation of such presses.

A 64-page Hoe, two-color web press shall be manned with a basic press complement of three men, namely, a first pressman, a second pressman and a brakeman pressman; with a fourth pressman (who may be an apprentice) required during the make-ready only.

A pressman may not run more than one rotogravure press. Rotogravure presses up to and including 14 inches with up to and including 5 units shall be run by one pressman and one assistant. A second pressman (brakeman) shall be employed on rotogravure presses 14 inches up to and including 36 inches with up to and including 7 units. In the event of the introduction of larger rotogravure presses and/or presses with a greater number of units than described above, the complement of men will be settled by mutual agreement taking into account current competitive operation of such presses.

81. In the event of the introduction of new processes or new machinery the complement of men required or other conditions shall be settled by mutual agreement before operation, later to be finally determined after a trial period mutually agreed upon. Such question shall be settled by reference to the standing Joint Conference Committee of the League and the Union.

82. In the event that a firm determines to introduce new equipment or process which is new to that shop, the firm must give consideration to the training of current employees to operate such new equipment or process.

## PART XII — STRUCK WORK

83. No employer shall require employees covered by this agreement to execute any work received from or destined for another employer whose employees are locked out or on a strike authorized by the International Printing & Graphic Communications Union or under circumstances which make an employer an ally of such employer, and such work shall not be within the scope of the employment of employees covered by this agreement. The Union will give the League forty-eight (48) hours notice of such

strike or lockout. However, nothing in the foregoing shall interfere with an Employer from continuing normal account work or interfere with his right to secure such work as may be had from a customer on a direct account basis. Provided such normal account work shall not violate the object of this section, i.e., no work shall be received from or directed to an office which is engaged in an authorized I.P. & G.C.U. strike or lockout recognized by the I.P. & G.C.U.

## PART XIII — PLANT RELOCATION

84. In the event of the removal of any plant covered by this Contract to a location outside the geographical jurisdiction of the New York Printing Pressmen and Offset Workers' Union No. 51, the Employer shall continue to recognize New York Printing Pressmen and Offset Workers' Union No. 51 as the bargaining agent for its Pressroom and Offset Preparatory room employees and this Contract shall continue to apply.

## PART XIV — OFFSET OPERATIONS

85. The following provisions shall govern an employer member of the League who recognizes by signature New York Printing Pressmen and Offset Workers' Union No. 51 as the representatives of employees of his Lithographic Department in the operation of offset presses and/or related lithographic work such as camera, platemaking and stripping. The complement for offset presses shall be as set forth in Part XI of this Contract.

## PART XV — RULES GOVERNING APPRENTICES

86. The Standards of Apprenticeship for Pressmen as stated below and subject to change as outlined therein constitute the approved apprentice agreement and rules governing apprentices.

The League and the Union pledge that there shall be no discrimination in the employment of apprentices. Apprentices shall be selected on the basis of qualifications and aptitudes in accordance with procedures established by the parties, and without regard to race, creed, color, sex or national origin.

The term of an apprenticeship shall be four (4) years.

Responsibility for apprentice procedures including selection, training and administration shall be vested in the Joint Appren-

tice Committee. The Joint Apprentice Committee shall be comprised of four representatives from the League and four representatives from the Union who shall have the full power and authority over all apprenticeships and shall have the power to cancel the apprenticeship of an apprentice who does not show aptitude and proper qualifications for the work, or who fails to comply with the rules and regulations established by the Joint Apprentice Committee relative to School attendance and curriculum.

This Committee shall meet jointly at the call of the Chairman of such Committee at such time and place as may be determined by them. Should the Committee be unable to agree, then either party to this contract shall have the right to a review by an arbitrator who shall be selected by the Joint Apprentice Committee. The decision of such arbitrator shall be final and binding on both parties to this contract.

The Joint Apprentice Committee shall be responsible to the Advisory Board of the School for Printing Pressmen and shall make appropriate arrangements for staff and office. Any necessary expenses incurred shall be paid from the Funds of the School for Printing Pressmen of New York City.

## Apprentice Qualifications

To be eligible for an apprenticeship, the candidate must:

(a) be at least 18 years of age; the maximum age to be determined by mutual agreement of the Joint Apprentice Committee.

(b) possess a high school diploma, or equivalent.

(c) be employed at least one year in an office in a job classification covered by the Printers League-New York Printing Pressmen and Offset Workers' Union No. 51 contract or the Printers League-New York Press Assistants' and Offset Workers' Union No. 23 contract.

(d) be physically able to perform the work required as evidenced by a doctor's certificate obtained as a result of a physical examination taken within three months prior to the date of application for apprenticeship.

(e) undergo an evaluation of aptitudes related to successful job performance through aptitude tests administered by the New York State Employment Service, or another competent agency.

Selected apprentices shall be registered with the Joint Apprentice Committee.

## Ratio

Each shop shall be allowed one (1) apprentice for each three (3) journeymen employed, two (2) apprentices for each eight (8) journeymen employed, three (3) apprentices for each thirteen (13) journeymen employed but no more than three (3) apprentices shall be permitted in any office without the specific approval of the Joint Apprentice Committee.

Notwithstanding the ratio prescribed in this section or in any other provision of this agreement, the parties agree that their object is to maintain a balance between available journeymen and regular situations in the industry and Union. Therefore, in the event an imbalance is brought about by the number of available journeymen exceeding the number of regular situations the indenture of new apprentices shall be terminated until the balance between available journeymen and regular situations is restored.

In assessing the balance between available journeymen and regular situations due allowance shall be made for unemployment which is occasional or of an insignificant amount.

In the event of disagreement with respect to the claim of an imbalance existing, the same shall be resolved pursuant to the provisions of the Arbitration Agreement of this Contract.

## Indenture

Apprentices will only be indentured in February and September of each year.

## Schooling

All apprentices shall be required to attend the School for Printing Pressmen at the New York School of Printing under the supervision of the Joint Apprentice Committee. An apprentice will begin attendance at the School effective the first semester

immediately following his indenture, and his total school training will encompass five school semesters. The remainder of his indenture will be spent in training on-the-job within the plant.

The first six months of apprenticeship shall be considered a probationary period. During this period, the apprenticeship agreement may be cancelled by either the employer or the apprentice through notification to the Joint Apprentice Committee.

Apprentices employed on the day shift shall attend school one stipulated afternoon session each week; while those employed on the night shift shall attend school one stipulated night session each week. In either case, the apprentice shall be paid by the employer for time off from the plant while attending such stipulated school sessions. It is agreed that replacements will not be required for apprentices while attending School. In addition, the apprentice must on his own time attend school one stipulated night session each week if employed on the day shift, and one stipulated afternoon session each week if employed on the night shift. There shall be no apprentices employed on the lobster shift.

## Training

Training at the School for Printing Pressmen will be conducted under the supervision of the Joint Apprentice Committee and in conjunction with the Board of Education. The course of training may be adjusted periodically by the Joint Apprentice Committee to meet the requirements of changing technology and to coordinate with the training facilities available.

It is the intent of the League and the Union that apprentices will receive training as far as practicable in all phases of the trade. It is recognized also that the capacity of apprentices to learn in various aspects of the trade will vary. Consequently, those who are responsible for the training of apprentices shall closely supervise the apprentices' progress. It may be advisable in certain cases to accelerate the rate at which an apprentice advances through the program. It may take some apprentices additional time to learn various phases of the trade. Allowance shall be made for such individual differences.

## General

The foreman is required to test the ability of all apprentices under his charge and direction during the first six (6) months

of their service, to determine the fitness of such apprentices for the trade. Should an apprentice be deemed incapable by the foreman or by the School, the Joint Apprentice Committee may cancel his apprenticeship.

When a decrease in the working force occurs, thus raising the ratio of apprentices above that permitted in the RATIO paragraph, the apprentice shall only be laid off when three (3) journeymen have been laid off. Apprentices shall be laid off and rehired in the same manner as journeymen covered by this contract.

No apprentice shall leave one office, and enter the service of another employer without the written consent of the President of the Union and the President or Secretary of the League. Any apprentice who is found guilty of obtaining membership as a journeyman through misrepresentation as to the time of his apprenticeship shall forfeit his apprenticeship.

Whenever an apprentice has served the required length of time in any shop, the employer shall have the right to retain him as a journeyman.

When an apprentice is out of employment, through failure or retirement from business of his employer or other causes beyond the control of the employer or the apprentice, such apprentice shall have an opportunity for completing his term in any office, regardless of the number of apprentices employed therein; provided that no more than one such extra apprentice shall be allowed in any shop, nor shall any journeyman be displaced.

## MEMORANDUM No. 1

February 20, 1974

MR. WILLIAM T. CERNERA, *President*
New York Printing Pressmen & Offset
Workers' Union No. 51

Dear Mr. Cernera:

This is to record and confirm the understanding reached that in the event an Energy or Paper Crisis or some similar situation which adversely affects the ability of our member plants in any or all parts of their operations, the Printers League and New York Printing Pressmen & Offset Workers' Union No. 51 will meet in a joint effort to develop mutually advantageous solutions.

Very truly yours,

NAT SORKIN
*President*

## MEMORANDUM No. 2

February 20, 1974

MR. WILLIAM T. CERNERA, *President*
New York Printing Pressmen & Offset
Workers' Union No. 51

Dear Mr. Cernera:

This is to record and confirm our agreement reached during negotiations with respect to the subject of overtime.

There is a recognition of a responsibility that in order to service customer requirements, reasonable amounts of overtime must be worked. However, there is no intent to work excessive overtime on equipment or in classifications in firms where employees are laid off so as to deny such employees work opportunities in that shop.

Very truly yours,

NAT SORKIN
*President*

# COST OF LIVING CLAUSE

(a) The Bureau of Labor Statistics Consumer Price Index (1967-1969 = 100) for New York City, hereafter called the Index, shall be used for all measurements of the change in cost of living.

(b) Effective March 4, 1976, if the percentage increase in the Cost of Living Index for the period January 1975 to January 1976 (as reported in February 1976) by the Bureau of Labor Statistics, Consumer Price Index, New York, exceeds 7½% there will be an adjustment of 2% ($6.28) added to the day scale of all classifications. If the increase in the Consumer Price Index for the above period is 7½% or less, no adjustment is required.

The amount of any Cost of Living Adjustment shall be included in computing all premiums and fringes such as overtime premium, night shift premium, vacation payments, holiday payment, bereavement pay and paid absence allowance.

In no event will a decline in the Index cause a reduction in the scale of wages or in any adjustment thereto.

In the event that the Bureau of Labor Statistics shall fail to publish the Index or shall change its base period, the parties shall meet to discuss and apply any such new Index and its application to the cost of living allowance. If the parties are unable to agree, then the same shall be referred to arbitration.

In the event the Federal Government establishes a program of wage controls during the term of this agreement and should such program prohibits, nullify or reduce any scheduled wage increase provided for employees during the term of this agreement, the Union shall have the right to terminate this agreement as of the date such wage increase is scheduled to become effective. At such time, the Union and the League will immediately enter into negotiations of the terms and conditions of a new contract.

## NO DEVIATION

The provisions of Section 4 of the Arbitration Agreement of the current contract between the League and the Union shall also be applicable to this agreement for the duration of this agreement.

Signed this 4th day of March, 1975.

**NEW YORK PRINTING PRESSMEN AND OFFSET WORKERS' UNION No. 51 I.P. & G.C.U.**

/s/ By SOL FISHKO
President, IP & GCU

/s/ By WILLIAM T.CERNERA
President

/s/ By EDWARD A. HUGHES
Secretary-Treasurer

**PRINTERS LEAGUE SECTION, PRINTING INDUSTRIES OF METROPOLITAN NEW YORK, Inc.**

/s/ By NAT SORKIN
President

/s/ By CHARLES SPECTOR
Chairman, Negotiating Committee

/s/ By JAMES E.HORNE
Executive Vice-President

## PART XVI — EXECUTION

**PRINTERS LEAGUE SECTION,**
**PRINTING INDUSTRIES OF METROPOLITAN**
**NEW YORK, Inc.**

NAT SORKIN
President

CHARLES SPECTOR
Chairman, Negotiating Committee

JAMES E. HORNE
Executive Vice-President

and

**NEW YORK PRINTING PRESSMEN AND**
**OFFSET WORKERS' UNION No. 51**
**I.P. & G.C.U.**

WILLIAM T. CERNERA
President

EDWARD A. HUGHES
Secretary-Treasurer

## PART XVII — INTERNATIONAL UNDERWRITING

This agreement has been made with the consent and approval of the International Printing and Graphic Communications Union, which undertakes to guarantee the fulfillment of the conditions hereinbefore set forth, except that the International Printing and Graphic Communications Union assumes no liability hereunder for any work stoppages or breaches of this contract unless said International Printing and Graphic Communications Union actually authorizes, ratifies and actively participates in said work stoppages or breaches of this contract.

SOL FISHKO
President
International Printing and Graphic
Communications Union

# ARBITRATION AGREEMENT

**between**

**PRINTERS LEAGUE SECTION,
PRINTING INDUSTRIES OF METROPOLITAN
NEW YORK, Inc.**

**and**

**NEW YORK PRINTING PRESSMEN AND
OFFSET WORKERS' UNION No. 51
I.P. & G.C.U.**

**In effect March 4, 1975 to and including March 3, 1977**

AGREEMENT, made this eighth day of April, 1971, between the Printers League Section, Printing Industries of Metropolitan New York, Inc., hereinafter called the "League," and New York Printing Pressmen and Offset Workers' Union No. 51, hereinafter called the "Union."

1. All members of the League under Contract with the Union shall have the guarantees hereinafter set forth when requirements of this arbitration agreement are observed.

2. The Union and all covered employees shall be protected against lockouts and there shall be no discrimination against members of the Union upon the part of the League, or any member thereof, provided said Union and said employees have complied with the terms of the agreement.

3. All members of the League shall be protected against walkouts, strikes, boycotts or any action by the Union, its members or any employee (such as unauthorized vacations, or individual resignations) which shall tend to delay production and against any other form of concerted interference by them with the normal and regular operation of any of their department. It is agreed that the procedures herein provided for settling disputes by local and international arbitration of issues shall be used to the exclusion of any other means available to the parties who sign this agreement under which all decisions are

final and binding on both parties. Any rights or remedies otherwise available to the parties to this agreement are hereby expressly waived.

4. No deviation from the terms of this Contract shall be allowed by either party thereto unless by joint agreement between the contracting parties. And it is further provided that when any deviation from this Contract is called to the Union's attention by the League in writing and same is not corrected within 30 days after notice, then any member of the League shall be entitled to put into effect the same conditions.

5. In the event of a difference arising between a member of the League and the Union, all work shall continue without interruption pending proceedings looking to conciliation or arbitration, either local or international, and the scale of hours provided in contract between the parties and working conditions prevailing prior to the time the differences arose shall be preserved unchanged until a final decision of the matter at issue shall have been reached.

6. All differences which cannot be settled by conciliation shall be referred to arbitration in the manner stipulated in this agreement. This section is hereby construed to contemplate the submission to arbitration of all questions which involve the cost, working conditions, efficiency and administration of the services of all employees employed in the operation of the pressrooms of the employer as pressmen and includes disagreements arising in negotiations for a new scale of wages, or for hours of labor, or in renewing or extending an existing scale, or in respect to a contract, which cannot be settled by conciliation. This agreement to arbitrate shall not include such matters as have to do solely with the internal laws of the League or the Union, relating to the self government of either and which laws in no way react to remove wages, hours and working conditions from the scope of this agreement.

7. All differences of opinion on any question arising under this agreement shall be submitted to the President of the Union and the President of the League for conciliation, and if conciliation fails, then and at all times said differences shall be submitted to the Joint Conference Committee.

8. The Joint Conference Committee shall be a standing committee and shall consist of five members and five alternates appointed by the League and a like number of members and alter-

nates appointed by the Union. This committeee shall meet separately on the call of the chairman of each part for consultation and jointly by the call of the chairman of each committee, at such time and place as may be determined by them. Due notice in writing of such meeting shall be given all interested parties. A majority vote of each party of the committee shall be necessary to a decision.

9. (a)—The said Joint Conference Committee must act within five (5) full business days when its services are desired by either party to an appeal as above.

(b)—The alternates may meet with the Committee of the organization to which they belong, but shall not take part in the proceedings of the Joint Conference Committee except as substitutes.

10. When the Joint Conference Committee is unable to reach a decision within ten (10) full business days after the final submission of the case to said Committee, then the dispute involving interpretation of the terms of the existing "Wage Scale and Working Conditions Contract" or the terms of a new contract shall be referred to an arbitrator or a board of three (3) arbitrators to be appointed by mutual agreement.

11. In the event it becomes necessary under this agreement to have an arbitrator or a board of three (3) arbitrators, he is or they are to be selected by a majority vote of each part of the Joint Conference Committee. Should the conferees fail to agree on an arbitrator or a board of three (3) arbitrators within fifteen (15) full business days, each side shall within five (5) full business days select an arbitrator and the two so selected shall within five (5) full business days select the third.

12. It is mutually agreed that, when possible, the arbitrator or arbitrators selected shall be men who are thoroughly acquainted with the printing industry.

13. The following rules shall govern the Joint Conference Committee in adjusting differences between parties to this agreement.

a. It may demand duplicate statements of grievances.

b. It may examine all parties involved in any differences referred to it for adjudication.

c. It may employ such stenographer or clerks as may prove necessary to facilitate its business.

d. It may require affidavits on any or all disputed points.

e. It shall allow equal opportunity for presentation of evidence or argument.

f. Its deliberations shall be conducted in executive session and the findings, whether unanimous or not, shall be signed by all members of the board in each instance, or shall be certified to by the chairman and secretary of the Joint Committee to the two parties to this agreement. A member of the Joint Conference Committee may hand in a dissenting opinion to become a part of the records of the proceeding.

g. In the event that either party to the dispute refuses to appear or present his case after due notice, it may be adjudicated and finding rendered in accordance with such evidence as may be in the possession of the Committee.

h. All evidence communicated to the Committee in confidence shall be preserved inviolate and no record of such evidence shall be kept except for use on appeal, in which case such inviolability shall be preserved.

i. All expenses attendant upon the settlement of any appeal or hearing before the Committee or arbitrator shall be borne by the party losing the appeal, or, in case of a compromise being reached, each party to the controversy shall bear half of the cost.

14. In case the matter in dispute is finally referred to an arbitrator or to a board of three (3) arbitrators both parties to the controversy shall appear personally or by proxy, the proxy to be either a duly recognized member of either body in good standing or their accredited representatives or counsel; or may submit records and briefs, and may make oral or written arguments in support of their several contentions. They may submit an agreed statement of facts, or a transcript of testimony properly certified to before a notary public by the stenographer taking the original evidence or dispositions.

15. Except as set forth in Section 16, it shall be permissible on 10 days notice in any local or ernational arbitration hearing for either side to raise the point that certain matters are not properly arbitrable and if the other side denies the claims the question raised as to the arbitrability of an issue shall first be determined by the International Arbitration Board before any

evidence is heard as to the merits of the issue claimed not to be arbitrable.

16. All differences arising under this agreement which involves the application of the International Arbitration Agreement as specified in Section 2, the Code of Procedure, or any clause or clauses, or any interpretation to be placed upon any part or parts of this agreement, which cannot be settled by conciliation, shall be referred to local arbitration, but if not so referred, it shall be submitted to the Chairman of the Arbitration Committee of the Union Employers Section, Printing Industry of America, Inc., and the President of the International Printing & Graphic Communications Union, together with the arguments and briefs of both parties, and an agreed statement of facts in the controversy, accompanied by a joint letter of transmission, certifying that each party is familiar with the contents of all documents. In case these two officials cannot reach a decision upon the issues involved, their differences shall be submitted to the International Board of Arbitration.

17. The question whether a department shall be union or non-union shall not be classed as a "difference" to be arbitrated. A department shall be interpreted to mean pressroom employees performing duties as enumerated in Section 2 of this Contract. Union departments shall be understood to mean such as are comprised of employees who have been formerly recognized, qualified and certified by the National Labor Relations Board as a unit appropriate for collective bargaining purposes in respect to rates of pay, wages, hours of employment, or other conditions of employment as set forth in this agreement.

18. The decision of the arbitrator or board of three (3) arbitrators shall be final and binding on both parties to this Contract except on appeal to the International Board of Arbitration by either party in cases of alleged evasion, collusion, fraud or bad faith, as provided in Section 23.

19. The International Board of Arbirtations shall consist of three members of the Board of Directors of the International Printing & Graphic Communications Union, and three members of the Special Standing Committee of the Union Employers Section, Printing Industry of America, Inc., or their proxies, and a seventh and disinterested member, who shall be selected by lot from a permanent panel of not more than ten impartial men, agreed upon by the representatives of the International Printing

& Communications Union and the representatives of the Union Employers Section, Printing Industry of America, Inc. The representatives of either party may, by notice in writing to the other party, remove the names of not more than two men from the permanent panel so formed. Vacancies for any cause in the panel shall be filled immediately in the manner the original panel was selected. The seventh member shall act as chairman of the Board, and shall preside, put motions, etc., and shall be entitled to vote on all propositions which may properly come before the Board in open session. He shall declare a motion carried only when at least a majority of the Board shall have voted affirmatively thereon. At the conclusion of the hearing of a case the chairman shall retire and the other members of the Board shall go into executive session and immediately take up a consideration of the issues involved. If in executive session a tie vote occurs on any proposition, or if there are any differences, questions or propositions which do not receive the vote of four of the six original members of the Board, the chairman shall be called in to cast the deciding votes on all unsettled questions or propositions. When the chairman is called in, the disputed points shall be fully discussed by all members of the Board, and the several views of the six original members explained to the chairman.

20. The International Board of Arbitration shall meet at such time and place as it may determine. Due notice of time and place of meeting of the International Board shall be given all interested parties.

21. The Award of the International Board of Arbitration in all cases shall include a determination of all the issues involved; it shall cover the full period between the raising of the issues and their final settlement; any change in the wage scale may be made effective from the date the issue first arose, at the discretion of the Board, but subject to the conditions of this agreement. An award by the majority of the International Board shall be final, and shall be accepted as such by the parties to the dispute.

22. At the request of either party to an arbitration the International Board shall determine whether evasion, collusion or fraud has characterized either the local or international proceedings, or whether either party has failed to comply with, or refuses to fulfill its obligation under a decision, or has omitted to perform any duty prescribed therein, or has secured any unfair or fraudulent advantage, or has evaded any provision of this agreement or any rule of the Code of Procedure, or is not acting

in good faith. At the conclusion of such inquiry it shall be wholly within the power of the International Board to reject all that has been previously done and order a rehearing before the International Board, or before a new local board; or it may find against the offending party or annul the individual arbitration contract. In the event either party to a dispute refuses to accept and comply with a decision of a local board which is not appealed, or with a decision of the International Board, or with any of the provisions of this International Arbitration Agreement, as determined by a decision of the International Board, all aid and support to the employer or the local union refusing acceptance and compliance shall be withdrawn by both parties to this agreement. The act or acts of such employer or member of the Union shall be publicly disavowed and the aggrieved party to this agreement shall be furnished by the other party hereto with an official document to such effect, signed by the Board of Directors of the International Printing & Graphic Communications Union and the Special Standing Committee of the Union Employers Section, Printing Industry of America, Inc.

23. The Code of Procedure agreed upon and adopted by the Union Employers Section, Printing Industry of America, Inc., and International Printing & Graphic Communications Union is hereby made a part of this agreement and shall be as binding on the parties hereto as if the same were set forth at length herein.

24. In the event that the International Arbitration Agreement between the Union Employers Section, Printing Industry of America, Inc., and International Printing & Grapihc Communications Union, dated November 1, 1957, is amended in any particular, the League and the Union shall forthwith confer for the purpose of making this agreement conform to such amended International Arbitration Agreement. Any matter not resolved by such conference shall be determined in the manner provided herein for the settlement of differences.

The foregoing agreement between the League and the Union shall remain in full force and effect upon being ratified by both parties thereto, and so attested from the date of execution to and including April 3, 1974.

In witness thereof, and in full attest of ratification by both bodies, the undersigned Presidents, respectively, of the parties to this agreement have hereunto signed their names, attested by the Secretaries of each organization, this 8th day of April, 1971.

# EXECUTION

**PRINTERS LEAGUE SECTION,**
**PRINTING INDUSTRIES OF METROPOLITAN**
**NEW YORK, Inc.**

NAT SORKIN
President

CHARLES SPECTOR
Chairman, Negotiating Committee

JAMES E. HORNE
Executive Vice-President

**and**

**NEW YORK PRINTING PRESSMEN AND**
**OFFSET WORKERS' UNION No. 51**
**I.P. & G.C.U.**

WILLIAM T. CERNERA
President

EDWARD A. HUGHES
Secretary-Treasurer

This agreement has been made with the consent and approval of the International Printing & Graphic Communications Union, which undertakes to guarantee the fulfillment of the conditions hereinbefore set forth, except that International Printing & Graphic Communications Union assumes no liability hereunder for any work stoppages or breaches of this contract unless said International Printing & Graphic Communications Union actually authorizes, ratifies and actively participates in said work stoppoges or breaches of this contract.

SOL FISHKO
President

International Printing & Graphic
Communications Union

STATE OF NEW YORK :
SS.:
COUNTY OF NEW YORK :

BRIAN SUGDEN

being duly sworn, says that on the 17 day of JUNE 1977 at No. 130 East 40th St in the Borough of MAN'H in NEW YORK CITY, he served a copy of the annexed APPENDIX upon MENAGH, TRAINER, BITHAI Esq. the Attorney for the INTERVENOR - (ALLIED PRINTING TRADES) in the within entitled action, by delivering a copy of the same to a person in charge of said Attorney's office, and leaving the same with him.

Sworn to before me, this 17 :
day of JUNE 1977

Brian Sugden

BRUCE S. GARNER
Commissioner of Deeds
City of New York - No. 4-1786
Commission Expires May 1, 1978

Bruce Garner

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STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

BRIAN SUGDEN

being duly sworn, says that on the 17th day of JUNE 1977 at No. 220 East 42nd St in the Borough of MAN'H in New York City, he served a copy of the annexed APPENDIX upon TOWNLEY + UPDIKE Esq., the Attorney for the PLAINTIFF in the within entitled action, by delivering a copy of the same to a person in charge of said Attorney's office, and leaving the same with him.

Sworn to before me, this 17
day of JUNE 1977 } Brian Sugden

BRUCE S. GARNER
Commissioner of Deeds
City of New York - No. 4-1786
Commission Expires May 1, 1978

Bruce Garner

## AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

JAMES BURNS being duly sworn, says that on the 17 day of June 19 he served the annexed Appendix upon Loomis, Owen, Fleming & Coleman Esq., the attorney for the Opposing Attorney herein by depositing 3 copies of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 2020-K-St. N.W. in ~~the Borough of~~ Washington, D.C., ~~City of New York~~, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this

17 day of June, 1977

BRUCE S. GARNER
Commissioner of Deeds
City of New York - No. 4-1786
Commission Expires May 1, 19[illegible]

James Burns

Form 323-60M-1126054(77) 346